110-68

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 216.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WILLIAM BRINDLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JANUARY 25, 1881.

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1 UNITED STATES,
Eastern district of Pennsylvania, set.:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between the United States of America, plaintiff in error, and William Brindle, defendant in error, in a plea of debt, a manifest error has intervened, to the great damage of the said The United States of America, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid, being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifth day of January, A. D. one thousand eight hundred and eighty-one, and in the one hundred and fifth year of the Independence of the said United States.

[SEAL.]

SAMUEL BELL,
Clerk of the Circuit Court, U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To William Brindle, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein the United States of America is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ of error mentioned shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this eleventh day of January, in the year of our Lord one thousand eight hundred and eighty-one.

WM. BUTLER, *Judge.*

2½ I accept service for Wm. Brindle of the within citation.
JOHN H. SLOAN.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

THE UNITED STATES OF AMERICA, PLAINTIFF in error, *vs.* WILLIAM BRINDLE, DEFENDANT IN ERROR. } No. 2. October sess., 1880.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1880, No. 2.

It is thus contained:

Be it remembered that on the 9th day of September, A. D. 1880, the United States of America, by its attorney, John K. Valentine, esq., files a præcipe for writ of error to district court of the United States for the eastern district of Pennsylvania, which being read, is in the words and figures following, to wit:

4 D. C., U. S., E. D. of Pa., May sess., 1877.

UNITED STATES *vs.* WILLIAM BRINDLE. } No. 4.

Issue writ of error to the district court of the United States for the eastern district of Penn'a, in the above case, returnable to the first Monday of October, 1880.

(Signed) JOHN K. VALENTINE,
U. S. Attorney.

To the clerk of the C. C. U. S.
SEPT. 9, 1880.

(Endorsed:) No. 2. October sess., 1880. C. C. U. S., E. D. of Pa., United States of America, plaintiff in error, vs. William Brindle, defendant in error. Præcipe for writ of error. Filed September 9, 1880. J. K. Valentine, U. S. Att'y.

5 And thereupon, on the day and year last aforesaid, a writ of error issued to the district court of the United States for the eastern district of Pennsylvania, in the words and figures following, to wit:

6 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

The President of the United States to the judge of the district court of the United States for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between the United States of America, plaintiff, and William Brindle, defendant, in a plea of debt, a manifest

error has intervened, to the great damage of the said The United States of America, as in its complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf;

You are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ,
7 so that you have the same before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, sitting at Philadelphia, Pennsylvania, on the first Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme court of the United States, at Philadelphia, this 9th day of September, A. D. 1880, and the 105th year of the Independence of the said United States.

[L. S.] (Signed) SAMUEL BELL,
Clerk Circuit Court U. S.

(Endorsed:) No. 2. October sess., 1880. C. C. U. S., E. D. of Pa. The United States of America, plaintiff in error, vs. Brindle, defendant in error.

Writ of error to district court of the United States brought into the office of the clerk of the district court Sept. 10th, 1880.

(Signed) CHARLES S. LINCOLN,
Clerk District Court.

8 And afterwards, to wit, on the 10th day of September, A. D. 1880, a citation issues in the words and figures following, to wit:

9 THE UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

To William Brindle:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the eastern district of Pennsylvania, to be holden at Philadelphia, on the first Monday of October next (1880), pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Pennsylvania, wherein the United States of America is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

10 Given under my hand this 10th day of September, A. D. 1880.

(Signed) WM. BUTLER,
Dist. Judge.

(Endorsed:) No. 2. October sess., 1880. C. C. U. S., E. D. of Pa. The United States of America, plaintiff in error, vs. Brindle, defendant in error. Citation. Brought into the office of the clerk of the district court September 10th, 1880. (Signed) Charles S. Lincoln, cl'k dist. court.

I hereby accept service of the within citation for Wm. Brindle.
(Signed) JOHN H. SLOAN.

11 And afterwards, to wit, on the 24th day of September, A. D. 1880, the record of the district court of the United States for the eastern district of Pennsylvania is filed, which said record is in the words and figures following, to wit:

12 In the district court of the United States in and for the eastern district of Pennsylvania, of May session, 1877. No. 4.
It is thus contained:

THE UNITED STATES }
vs. } Summons. Debt $50,000.
WILLIAM BRINDLE. }

Pleas before the honorable, the judge of said court.

Be it remembered, that on the 23rd day of May, A. D. 1877, upon præcipe filed by John K. Valentine, esq., attorney of the United States for the district aforesaid, a writ of summons issued, which, with the acceptance of service thereof, is in the words and figures following, to wit:

13 UNITED STATES,
Eastern District of Pennsylvania, set.:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you summon William Brindle, late of your district, if he may be found therein, so that he be and appear before the judge of the district court of the United States in and for the eastern district of Pennsylvania, at a session of the same court to be holden at Philadelphia on the first Monday of June next, to answer to the United States of America of a plea that they render unto them the sum of fifty thousand dollars, which to them they owe, and from them they unjustly detain, as it is said, &c., and have you then there this writ.

Witness, the honorable John Cadwalader, judge of said court, at Philadelphia, this twenty-third day of May, A. D. 1877, and in the 101st year of the Independence of the said United States.

[SEAL.] W. W. CRAIG,
Pro Clerk.

14 And on said writ acceptance of service is endorsed in the words and figures following, to wit:

I hereby accept service of the within writ for the defendant and request the clerk to enter my appearance for him.

JOHN H. SLOAN.

MAY 28, 1877.

And thereupon, to wit, on the 28th day of May, A. D. 1877, the appearance of John H. Sloan, esq., attorney for the defendant, is entered.

And afterwards, to wit, on the 22nd day of June A. D. 1877, the said John K. Valentine, esq., attorney as aforesaid, presents the declaration of the plaintiffs, and the same, being filed, is in the words and figures following:

15 In the district court of the United States for the eastern district of Penn'a, of May sessions, in the year one thousand eight hundred and seventy-seven. No. 4.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

William Brindle, late of the district aforesaid, was summoned to answer the United States of America of a plea that he render to the said The United States of America the sum of fifty thousand dollars, lawful money w. w. c. of the said The United States of America, which he owes to and unjustly detains from the said United States of America. And thereupon the said The United States of America, by John K. Valentine, esquire, their attorney, complain:

For that whereas heretofore, to wit, on the nineteenth day of March, in the year eighteen hundred and fifty-seven, at the district aforesaid, and within the jurisdiction of this court, the said William Brindle, to- w. w. c. gether with James Junkin Dull, Andrew Porter Wilson, and David K. Jackman, by their certain writing obligatory, sealed with their seals, and now shown to the court here, the date whereof is the day and year aforesaid, acknowledged themselves jointly and severally, their
16 joint and several heirs, executors, and administrators, to be held and firmly bound to the said United States of America in the full and just sum of fifty thousand dollars, lawful money of the United States, above demanded to be paid to the United States, which said bond or writing obligatory was and is subject to a condition thereunder written whereby, after recit.ng to the effect following, to wit, that whereas the President of the United States hath pursuant to law appointed the said William Brindle receiver of public money for the district of lands subject to sale at Le Compton, in the Territory of Kansas, for the term of four w. w. c. years from the eighteenth day of February, 1857, by commission bearing date twentieth day of February, 1857, it was conditioned that if the said William Brindle had truly and faithfully executed and discharged, and should continue truly and faithfully to execute and discharge, all the duties of the said office, to wit, the office of receiver of public moneys as aforesaid, according to law, then the said obligation should be null and void, otherwise to abide and remain in full force and virtue.

Nevertheless the said plaintiffs say that after the making of the
17 said writing obligatory, to wit, on the twenty-ninth day of February, in the year eighteen hundred and sixty-four, the said William Brindle did not faithfully perform all the duties of said office of receiver of public moneys as aforesaid according to law, in that he did not then and there pay over to the said United States a large sum of money, to wit, the sum of nine hundred and forty-three dollars and forty-five cents, as required by the provisions of the act of Congress in such case made and provided, which said sum of money was then and there due the said United States by the said William Brindle in his said capacity of receiver of public moneys on account of moneys theretofore received by him,

the said William Brindle, in his said official capacity as receiver of public moneys, and not paid over to the said United States. Nor has the said William Brindle at any time since paid or caused to be paid to the said United States the said sum of nine hundred and forty-three dollars and forty-five cents, or any part thereof, although often requested so to do, but the same to pay, or any part thereof, hath hitherto wholly neglected and refused, and still doth neglect and refuse.

18 And the said plaintiffs, for assigning a further breach of the said condition of the said writing obligatory, further say that the said William Brindle after the making of the said writing obligatory, to wit, on the thirtieth day of June, A. D. 1860, did not properly account for and pay over to the said United States all the public moneys which had come into his hands, in that he did not then and there pay over to the said United States a large sum of money, to wit, the sum of one hundred and thirty-seven dollars and seventy-eight cents lawful money, etc., as required by the provisions of the act of Congress in such case made and provided, which said sum of money was then and there due to the said United States by the said William Brindle in his said official capacity as receiver
w. w. c. of public moneys, on account of moneys theretofore received by him, the said William Brindle, in his said official capacity and not paid over to the United States. Nor has the said William Brindle at any time since paid or caused to be paid to the said United States the said sum of one hundred and thirty-seven dollars and seventy-eight cents, or any part thereof, although often requested so to do, but the same to pay, or

19 any part thereof, hath hitherto wholly refused and still doth refuse.

And the said plaintiff, for assigning a further breach of the said condition of the said writing obligatory, further says that the said
w. w. c William Brindle, after the making of the said writing obligatory, to wit, on the fifth day of October, in the year eighteen hundred and sixty, did not properly account for and pay over to the said United States all the public moneys which had come into his hands, in that he did not then and there pay over to the said The United States a large sum of money, to wit, the sum of eight thousand one hundred and seventy dollars and forty-five cents, as required by the provisions of the act of Congress in such case made and provided, which said sum of money was then and there due to the said United States by the said William Brindle in his said official capacity as receiver of public moneys, on account of moneys theretofore received by him, the said William Brindle, in his said official capacity, and not paid over to the *same* United States.

Nor has the said William Brindle at any time since paid or caused to be paid to the said United States the said sum of eight thousand

20 one hundred and seventy dollars and forty-four cents, or any part thereof, although often requested so to do, but the same to pay, or any part thereof, hath hitherto wholly refused and still doth refuse. By reason of which said breaches the said writing obligatory became forfeited and an action hath accrued to the said United States to demand and have of and from the said defendant the said sum of fifty thousand dollars above demanded. Yet the said defendant, although often requested so to do, hath not as yet paid the said sum of money, or any part thereof, to the said plaintiff, or otherwise, according to the writing obligatory and condition thereof, but to pay the same, or any part thereof, hath hitherto wholly

refused, and still doth refuse, to the damage of the said plaintiffs fifty thousand dollars, and therefore they bring their suit, etc.

JOHN K. VALENTINE,
U. S. Attorney.

21 And afterwards, to wit, on the 5th day of July, A. D. 1877, the defendant aforesaid, by his attorney aforesaid, makes his pleas in the words and figures following, to wit:

U. S.
vs.
BRINDLE. } D. C. U. S., May, 1877. No. 4.

Defendant pleads.

1. Non est factum.
2. Nil debet.
3. Payment with leave, &c.
4. Set-off with leave, &c.

JOHN H. SLOAN,
Def't's Att'y.

And afterwards, to wit, on the 21st day of July, A. D. 1877, the plaintiffs aforesaid, by their attorney aforesaid, make replication and tender issue, in the words and figures following, to wit:

Dist. c't U. States, east. dist. of Penn'a.

U. S.
vs.
WILLIAM BRINDLE. } No. 4, of May sess., 1877.

The plaintiffs reply, "Non solvit," "No set-off" and issue.

JOHN K. VALENTINE,
U. S. Att'y.

22 And afterwards, to wit, on the 7th day of December, A. D 1877, by John H. Sloan, esq., attorney as aforesaid, there is filed a copy of pleas and notice of special matter, which is in the words and figures following, to wit:

U. S.
vs.
BRINDLE. } D. C. U. S., May, '77. No. 4.

JOHN K. VALENTINE, Esq.,
U. S. Att'y:

DEAR SIR: Please take notice that the defendant has filed pleas in the above cause as follows:

1. Non est factum.
2. Nil debet.
3. Payment with leave, etc.

4. Set-off with leave, &c.

Please also take notice that under the 3rd and 4th pleas defendant will offer evidence at the trial of the following facts:

That from time to time after his appointment as receiver of public moneys for the district of lands subject to sale at Lecompton, in the Territory of Kansas, and until and after he ceased to hold said office
23 he furnished and delivered to the United States full and detailed accounts as receiver aforesaid and disbursing agent, with vouchers and proofs substantiating the same; which accounts and vouchers are still retained by the United States and will be asked to be produced at the trial by them; that the accounts and vouchers of defendant as receiver aforesaid and disbursing agent show that the United States was indebted to the defendant as receiver aforesaid on May 6, 1861, in the sum of twenty-one thousand four hundred and three dollars and three cents ($21,403.03), for which sum the defendant will ask for a verdict and certificate with interest thereon; and he calls upon the United States to pro- w.w.c. duce at the trial all alleged adjustments or settlements of said accounts by their officers or any of them, and also all correspondence between the officers of the United States and the defendant in relation to said accounts and vouchers.

You will also please take notice that the defendant does not waive his right to demand from the United States credit for another balance of one thousand two hundred and twenty-four dollars and fifty-two cents, with interest from May 6, 1861, due to him as special receiver of
24 Indian moneys, &c., to which office he was appointed subsequent to having been appointed receiver of public moneys, &c., as aforesaid, and which sum is shown to be due to him by the accounts and vouchers furnished to the United States by him as special receiver aforesaid, and still in their possession, said office of special receiver, &c., being a distinct and separate office and employment from that of receiver of public moneys, &c., as aforesaid; which accounts and vouchers and all alleged settlements or adjustments thereof by the officers of the United States, if material to the issues in this cause, he requests the United States to produce at the trial, w.w.c. together with all correspondence between the officers of the Government and the defendant in relation thereto, and the balance shown by them to be due to him, he will also (if lawfully admissible under the said issues), claim a verdict and certificate for.

JOHN H. SLOAN,
For Def't.

25 And afterwards, on the 13th day of November A. D. 1878, the defendant files a supplemental notice of special matter to be offered in evidence, in the words and figures following:

U. S. *vs.* BRINDLE } D. C. U. S, May ses., '77. No. 4.

213 So. 6TH St., *Nov.* 12, 1878.

JOHN K. VALENTINE, Esqr.,
U. S. Attorney:

DEAR SIR: Please take notice that the amount which defendant claims

to be due to him according to his accounts and vouchers as receiver of public moneys for the district of lands subject to sale at Lecompton in the Territory of Kansas and disbursing agent on May 6, 1861, is twenty-two thousand nine hundred and forty-eight dollars and forty-four cents, for which sum defendant will ask for a verdict and certificate with interest thereon.

You will also please take notice that the defendant will also ask for a verdict and certificate for the $1,224.52 claimed in the notice of special matter given you July 5, 1877, with interest.

26 This notice is given because the amount defendant claims under his accounts and vouchers as receiver of public moneys, &c., is increased from $21,403.03 as set forth in said notice of July 5, 1877, to $22,948.44 as above set forth, and in view of the act of Congress of June 10, 1878, which I have referred you to, and is supplemental to the said notice of special matter given July 5, 1879.

Yours truly,

(Signed) JOHN H. SLOAN,
Att'y for Def't.

27 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And afterwards, on the seventh day of June A. D. 1879, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise come to wit: Charles Smith, John C. Morrell, George S. Craighead, George W. Briggs, Frank H. Hessenbrack, William T. Brown, Zebular Berlin, Perry Cranbaiger, Thos. K. Donelly, Thos. S. Foulkrod, Albert G. Hetherington, and Stephen Lathbury who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this cause between the United States and William Brindle.

And afterwards, on the thirteenth day of June A. D. 1879, the jurors aforesaid, upon their resective oaths and affirmations aforesaid, do say that upon the issue joined in this cause they find specially as follows:

28 *Special verdict.*

1. That William Brindle, the defendant, was duly appointed receiver of public moneys for the district of lands subject to sale at Lecompton, in the Territory of Kansas, for the term of four years from the 18th day of February, 1857, by commission bearing date the 20th day of February, 1857.

2. That as such receiver he gave bond to the United States in the sum of $50,000.00, dated the 19th day of March, 1857, conditioned that if he had truly and faithfully executed and discharged, and should continue faithfully to execute and discharge all the duties of the said office according to law, then the said obligation to be void; otherwise to remain in full force and virtue.

3. That prior to the 19th day of March, 1857, the said William Brindle was duly appointed acting disbursing agent, and that on the said date he gave a bond in the sum of $5,000.00 conditioned for the faithful performance of the duties of the said office.

4. That on the 24th of October, 1856, the said William Brindle was duly appointed special receiver and superintendent to assist the special commissioner to dispose of the Delaware Indian trust lands at Fort Leavenworth, in the said Territory of Kansas, under the treaty with the Delaware tribe of Indians.

5. That on May 15th, 1857, the said William Brindle was duly appointed as special receiver and superintendent to assist the special commissioner to dispose of the trust lands of the Kaskaskia and Peoria, Piankeshaw and Wea Indian confederated tribes of Indians at Paoli, Kansas Territory.

6. That in pursuance of said appointments the said William Brindle made sales of certain Indian lands and of certain public lands, and received and disbursed certain Indian and public moneys.

7. That the First Comptroller of the Treasury, in a transcript of account dated May 8th, 1861, duly certified, charged the said defendant with the sum of $8,170.45 on account of Wea, &c., Indian lands; also, with the sum of $137.78 on account of Delaware Indian lands; and also with the sum of $943.45 on account of sale of public lands, making in the aggregate, $9,251.68.

29 That the said First Comptroller, in a further adjustment of the said account reduced the said account by crediting the said William Brindle with the sum of 4,713.00 mentioned in the act of Congress passed June 10th, 1878, stating as a balance against him the sum of $4,538.68.

That the interest on said sum from May 6th, 1861, to June 13th, 1879, is 4,929.76, amounting in all to $9,468.44.

8. That the Second Comptroller of the Treasury, in a transcript of account dated 19th August, 1861, duly certified, charged that the said William Brindle was indebted to the United States in the sum of $2,073.77 on the Wea, &c., Indian account, and that there was due the said William Brindle on account of the Delaware Indian account 142.27, and that the said William Brindle was indebted to the United States in the sum of $1,931.50 on his joint account as special receiver of Indian trust lands; that the interest on the said sum of $1,931.50 from August 14th, 1861, to June 13th, 1879, is the sum of 2,066.70, amounting in all to $3,998.20, as the amount due the United States.

9. That the area embraced by military bounty-land warrants located by the said William Brindle as receiver of public moneys and acting disbursing agent after his said appointment, under said bonds, was 1,904,446.86-100 acres.

That the fees for locating the same received by him from the holders of the warrants from April, 1857, to October 31st, 1860, amounted in the aggregate to the sum of $47,661.18, at the rate of one dollar for
30 each forty acres; that a moiety thereof is the sum of $23,830.59; that the amount of fees allowed and retained by the said William Brindle was 8,383.31; that the amount disallowed is the sum of $15,447.28, and that the interest on the same from the respective dates, as above, is the sum of 18,373.08, amounting in all to $33,820.36.

10. That the defendant, as receiver of public moneys, received as the proceeds of the sales of public lands made by him from April, 1857, to May, 1861, the sum of $129,513.25. That the whole commission on this sum at one per centum amounted to the sum of $1,295.13. That he was disallowed and paid by the United States on account of the same the sum

of 658.85. That there was allowed to him the sum of $636.28. That the interest on the said sum of $636.28, so disallowed, from May 6th, 1861, to June 13th, 1879, is the sum of 691.10, amounting in all to $1,327.38.

11. That the defendant, as disbursing agent, paid out for various services and items the sum of $1,536.30. And that the said payments were proper and necessary to be made, and that claim for the same was made and disallowed. That the interest on said sum amounts to the sum of 1,756.07, amounting in all to $3,292.37.

12. That an act of Congress was passed June 10th, 1878, by which the sum of $4,713.00 was to be placed to the credit of the said William
31 Brindle as disbursing agent, and that the interest on said sum from January 26th, 1861, to June 13th 1879, is the sum of 5,197.64, making together the sum of $9,910.64.

13. That the First Comptroller of the Treasury has upon the account of the defendant, as receiver of public moneys, certified that the defendant was indebted to the United States on said account on the 6th day of May, 1861, in the sum of $943.45.

That this sum is made up as follows:

First, the sum of $85.90 charged against defendant for fees for locating lands on military bounty-land warrants which were not actually located by him under said warrants.

Secondly, with the sum of $618.20 for fees received by the defendant from November 1st, 1860, to May 6th, 1861, for locating military bounty-land warrants, and not credited by him to the United States nor paid by him to them.

Thirdly, the amount of $239.35 being the amount which the defendant admitted in his final account as said receiver to be due the United States.

Fourthly, that the interest on said $239.35 from May 6th, 1861, to June 13th, 1879, is 259.97, making together the sum of $499.32.

14. That while defendant was acting as special receiver of Delaware Indian trust land moneys he received for the sale of such lands the sum of $467,749.19; that commissions on said sum at one per centum would amount to the sum of $4,677.49; that he was allowed 2,500.00 for commissions on said sum; that he was disallowed the sum of $2,177.49,
32 which with the sum of 142.27 makes $2,319.76; that the interest on said sum of $2,319.76 from March 23d, 1857, to June 13th, 1879, makes the sum of 3,092.85, making together the sum of $5,412.61.

15. That while the defendant was acting as special receiver of Kaskaskia and Peoria, Piankeshaw and Wea Indian trust moneys he sold 208,656.30 acres of lands, for which he received the sum of $347,852.74. That the commissions on said sum at one per centum amounts to $3,478.53. That he was allowed 2,500.00 for commissions on said sales. That he was disallowed the sum of 978.53. That the interest on said sum so disallowed from May 6th, 1861, to June 13th, 1879, amounts to 1,062.84, making in all $2,041.37. That the sum of $978.53, the amount so disallowed, deducted from the sum of 2,073.77 leaves the sum of $1,095.24. That the interest on this sum of $1,095.24 from May 6, 1861, to June 13, 1879, amounts to 1,189.61, which together amounts to the sum of $2,284.85.

16. That while the defendant was acting as special receiver of Indian trust moneys he paid out for the expenses of the sale of the Wea, &c., Indian trust lands, the sum of $3,783.37, less the sum of 171.87,

33 leaving the sum of $3,611.50; and for the expenses of the sale of the Delaware Indian trust lands the sum of 280.05, making the sum of $3,894.55, for which no credit was given to the defendant by the First Comptroller of the Treasury, which sums were necessarily expended by the defendant as such special receiver, and are reasonable for the purposes for which the payments were made.

17. That for the labor and risk of making sales of Indian trust lands one per cent. commissions on the amount of such sales is a fair compensation.

A. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the defendant as receiver of public moneys and as acting disbursing agent, and also the accounts as special receiver of Indian moneys, and that the defendant is not entitled to any commissions on sales of Indian trust lands, and that he is not entitled to the expenses incident to the sale of such lands, paid by him, and that he is not entitled to military bounty land warrant fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the plaintiff and assess the damages at $3,002.38, with interest thereon from May 6, 1861, to June 13, 1879, 3,261.08, amounting in all to $6,263.46.

B. If the court should be of the opinion that the Second Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the defendant as special receiver of Indian trust moneys, and that the defendant is not entitled to commissions on sales of Indian trust lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is not entitled to military bounty land warrant fees exceeding $2,500.00

34 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due the defendant to be the sum of $3,460.25, with interest to June 13, 1879, amounting to 3,924.39, making in all $7,384.64.

C. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys, and as acting disbursing agent, and also as special receiver of Indian trust moneys, and that the defendant is entitled to commissions on sales of Indian trust lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is entitled to the military bounty land warrant fees exceeding $2,500.00 per year, including commissions on cash sales on public lands, then the jury find for the defendant, and certify the amou't due him to be the sum of $23,318.03, with interest to June 13, 1879, amounting to 27,661.16, making together the sum of $50,979.19.

D. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys, and as acting disbursing agent, and also as special receiver of Indian trust moneys, and that the defendant is entitled to commissions on the sales of Indian trust lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is not entitled to military bounty land warrant fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of $6,616.27, with interest to June 13, 1879, 7,925.51, making together the sum of $14,541.78.

35 E. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the defendant as receiver of public moneys, and as acting disbursing agent, and also as special receiver of Indian trust moneys, and that he is not entitled to commissions on sales of Indian trust lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is entitled to military bounty land warrant fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of $20,162.01, with interest to June 13, 1879, amounting to $23,660.04, making together the sum of $43,822.05.

F. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys, and as acting disbursing agent, and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the defendant as special receiver of Indian trust moneys, and that the defendant is entitled to commissions on sales of Indian trust lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is entitled to the military bounty land warrant fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of $23,318.03, with interest to June 13, 1879, amounting to $27,661.16, making together the sum of $50,979.19.

G. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys and as acting disbursing agent,

36 and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the defendant as special receiver of Indian trust moneys, and that the defendant is entitled to commissions on the sales of Indian trust lands exceeding the sum of $2,500.00, for each sale of said lands, and that he is not entitled to military bounty land warrant fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of $6,616.27, with interest to June 13, 1879, amounting to $7,925.51, making in all $14,541.78.

H. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys and as acting disbursing agent, and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the defendant as special receiver of Indian trust moneys, and that he is not entitled to commissions on sales of Indian trust lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is entitled to military bounty land warrant fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of $20,162.01, with interest to June 13, 1879, amounting to 23,660.04, making together the sum of $43,822.05.

37 And afterwards, on the 20th day of April, A. D. 1880, judgment being entered on the special verdict, is in the words and figures following, to wit:

District court, U. States, May sessions, 1877.

UNITED STATES
vs.
WILLIAM BRINDLE. } No. 4.

1880, APRIL 20.

By the Court:

This case coming up for hearing just before the commencement of the April term of the circuit court, judgment is entered pro forma for the defendant (without argument) to facilitate an early hearing in the Supreme Court, to which counsel inform the court the case will go.

38 "And now, April 20th, 1880, on motion of Francis W. Hughes and John H. Sloan, esquires, attorneys for defendant, the court enters judgment upon the special verdict in the above cause in favor of the defendant and against the United States, and does hereby certify and determine according to the provisions of said verdict and the act of Congress entitled "An act to pay for clerical services and extraordinary expenses under the seventh section of the act of August eighteenth, eighteen hundred and fifty-six, in the Pawnee land district in Kansas, approved June tenth, A. D. 1878, that there is a balance due to the said defendant, William Brindle, of fifty thousand nine hundred and seventy-nine dollars and nineteen cents on the thirteenth day of June, A. D. 1879, with interest thereon from said last-named date, and does hereby further certify according to said act the said amount of fifty thousand nine hundred and seventy-nine dollars and nineteen cents, with interest as aforesaid, so found to be due to the said defendant, William Brindle, to the Secretary of the Treasury of the United States for payment out of any moneys in the Treasury not otherwise appropriated.

39 And afterwards, to wit, on the 10th day of September, A. D. 1880, the United States, by their attorney aforesaid, file an assignment of errors and prayer for reversal in the following words, to wit:

D. C. U. S. E. D. of Pa., May session, 1877.

UNITED STATES, PLAINTIFFS IN ERROR,
vs.
WILLIAM BRINDLE, DEFENDANT IN ERROR. } No. 4.

And now, to wit, September 9th, 1880, came the said plaintiffs in error, by their attorney, John K. Valentine, esq'r, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid was given for
S. R. the said defendant in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs in error against the said defendant in error, and the said plaintiffs in error pray that the judgment may be reversed, annulled, and altogether held for nothing, and that they may be restored
40 to all things which they have lost by the occasion of the said judgment, &c.

(Signed) JOHN K. VALENTINE,
U. S. Attorney, for Plaintiff in Error.

41 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court in a certain action of debt therein lately pending, wherein the United States of America are the plaintiff' against William Brindle, defendant, so full and entire as the same now remains of record in said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court, at Philadelphia, this twenty-third day of September, A. D. 1880, and in the one hundred and fifth year of the Independence of the said United States.

(Signed) CHARLES S. LINCOLN,
Clerk District Court.

42 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

And now, to wit, the 21st day of October, A. D. 1880.

Present, the honorable William McKennan, circuit judge, the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
WILLIAM BRINDLE, DEFENDANT IN ERROR.

And now, October 21, 1880, this cause coming on to be heard upon writ of error, it is ordered that the judgment of the district court of the United States for the eastern district of Pennsylvania be affirmed, and that judgment be entered against the United States and in favor of the defendant in error upon the special verdict set forth in the record in this court for the sum of fifty thousand nine hundred and seventy-nine dollars and nineteen cents, with interest from the thirteenth day of
43 June, A. D. 1879, and that the order of the said district court made April 20th, 1880, in entering said judgment, is hereby affirmed.

(Endorsed:) 2' Oct., 1880. C. C. U. S. U. S. vs. Brindle. Affirmance of judgment of district court. Entered & filed October 21, 1880.

44 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of the United States of America, plaintiff' in error, vs. William Brindle, defendant in error, No. 2, October session, 1880, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed

the seal of the said court, at Philadelphia, this twelfth day of January, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of these United States the one hundred and fifth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

45 THE UNITED STATES OF AMERICA, plaintiffs below and plaintiffs in error,
vs.
WILLIAM BRINDLE, DEFENDANT BELOW AND defendant in error.

And now, to wit, January 6th, 1881, come the said plaintiffs in error, by their attorney, John K. Valentine, esquire, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid was given for the said defendant in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs in error and against the said defendant in error; and the said plaintiffs in error pray that the judgment may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by the occasion of the said judgment, etc.

JOHN K. VALENTINE,
U. S. Attorney for Plaintiffs in Error.

(Indorsed:) United States of America, pl'ffs in error, pl'ffs below, vs. William Brindle, def't in error, def't below. Assignments of errro & & prayer, for reversal of judg't. Jno. K. Valentine, U. S. att'y.

(Indorsement on cover:) No. 216. The United States, plaintiff in error, vs. William Brindle. E. Pennsylvania, C. C. U. S. Filed 25th January, 1881.

110-688

OFFICE SUPREME COURT U. S.
FILED
JAN 14 1884
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
WILLIAM BRINDLE.
} No. 216.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
WILLIAM BRINDLE. } No. 216.

BRIEF FOR THE UNITED STATES.

This is an action of debt on the bond given by William Brindle, as receiver of public moneys for the Lecompton land district, Kansas Territory.

The declaration assigns three several breaches of the condition of the bond (R., pp. 5–7), but it is unnecessary to make special reference to them, as the case turns on a special verdict.

The defendant pleaded *non est factum*, *nil debet*, payment with leave, &c., and set-off with leave, &c. (R., pp. 7, 8.)

Under the plea of set-off the defendant sought to establish not only that he was no debtor of the United States, but that the United States was largely indebted to him.

Before the trial of the action, that is to say, on the 10th June, 1878, Congress passed an act giving the court juris-

diction to try, hear, and determine in this action all disputes and differences between the said Brindle and the United States, growing out of the former's accounts as receiver and acting disbursing agent of public moneys, &c. (20 Stat., 541), which act is as follows:

AN ACT to pay for clerical services and extraordinary expenses, under the seventh section of the act of August eighteenth, eighteen hundred and fifty-six, in the Pawnee land-district in Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with the seventh section of the act of August eighteenth, eighteen hundred and fifty-six, and the settlement of the account of William Brindle, receiver of public moneys and disbursing agent in the Pawnee land district in Kansas, under and in accordance with said act, and the report by the Secretary of the Interior to Congress on January twenty-sixth, eighteen hundred and sixty-one, as required by said act, the sum of four thousand seven hundred and thirteen dollars be, and the same is hereby, appropriated, which amount shall be placed to the credit of the said William Brindle, late receiver, and so forth, to bear date from January twenty-sixth, eighteen hundred and sixty-one, being the date of settlement and report of said account under said act.

SEC. 2. That the suit now pending in the district court of the United States for the eastern district of Pennsylvania, at May sessions, eighteen hundred and seventy-seven, number four, brought by the United States against William Brindle, shall not be withdrawn, discontinued, nor abandoned by the United States without the written request or consent in writing of the said William Brindle, filed of record

therein; and in the trial of said cause the said court shall hear and determine all disputes and differences between the United States and the said William Brindle in reference to his various accounts as receiver and acting disbursing agent of public money in the Pawnee land district in Kansas, and also in relation to his accounts as special receiver of Indian trust-moneys received and expended under the Indian treaties of May sixth and May thirtieth, eighteen hundred and fifty-four, as well under said Indian treaties as under the laws of the United States; and the said William Brindle, in the trial of said cause, shall be permitted and be entitled to make defense and claim set-off in his favor in said court, if said court shall determine him to be entitled thereto, with the same effect as if said suit were commenced by an individual against the said William Brindle, and said set-off shall not be barred by any statute of limitations. And should the said court, in the said trial, determine that there is a balance due to the said William Brindle upon said accounts, the court shall certify the amount so found to be due to him to the Secretary of the Treasury of the United States, for payment, out of any moneys in the Treasury not otherwise appropriated, reserving, nevertheless, the right of appeal to either party from the judgment of the said court.

Approved June 10, 1878.

It is to be noted that this action is against Brindle *alone*, his sureties not being parties to it.

SPECIAL VERDICT.

The jury rendered a special verdict, as follows:

1. That William Brindle, the defendant, was duly appointed receiver of public moneys for the district of lands subject to sale at Lecompton, in the Territory of Kansas, for the term of four years from the 18th day of February, 1857, by commission bearing date the 20th day of February, 1857.

2. That as such receiver he gave bond to the United States in the sum of $50,000, dated the 19th day of March, 1857, conditioned that if he had truly and faithfully executed and discharged, and should continue faithfully to execute and discharge, all the duties of the said office according to law, then the said obligation to be void; otherwise, to remain in full force and virtue.

3. That prior to the 19th day of March, 1857, the said William Brindle was duly appointed acting disbursing agent, and that on the said date he gave a bond in the sum of $5,000, conditioned for the faithful performance of the duties of the said office.

4. That on the 24th of October, 1856, the said William Brindle was duly appointed special receiver and superintendent to assist the special commissioner to dispose of the Delaware Indian trust-lands at Fort Leavenworth, in the said Territory of Kansas, under the treaty with the Delaware tribe of Indians.

5. That on May 15, 1857, the said William Brindle was duly appointed as special receiver and superintendent to assist the special commissioner to dispose of the trust-lands of the Kaskaskia and Peoria, Piankeshaw and Wea Indian confederated tribes of Indians at Paoli, Kansas Territory.

6. That in pursuance of said appointments, the said William Brindle made sales of certain Indian lands

and of certain public lands, and received and disbursed certain Indian and public moneys.

7. That the First Comptroller of the Treasury, in a transcript of account dated May 8, 1861, duly certified, charged the said defendant with

the sum of.....	$88,170 45
on account of Wea, &c., Indian lands.	
Also, with the sum of.....	137 78
on account of Delaware Indian lands.	
And also, with the sum of.....	943 45
on account of sale of public lands.	
Making in the aggregate.....	9,251 68
That the said First Comptroller, in a further adjustment of the said account, reduced the said account by crediting the said William Brindle with the sum of.....	4,713 00
Mentioned in the act of Congress passed June 10, 1878, stating as a balance against him the sum of.....	4,538 68
That the interest on said sum from May 6, 1861, to June 13, 1879, is.....	4,929 76
Amounting in all to.....	9,468 44

8. That the Second Comptroller of the Treasury, in a transcript of account dated August 19, 1861, duly certified, charged that the said William Brindle was indebted to the United States in the

sum of.....	$2,073 77
on the Wea, &c., Indian account.	
And that there was due the said William Brindle on account of the Delaware Indian account.....	142 27

And that the said William Brindle was indebted to the United States in the sum of	1,931 50
on his joint account as special receiver of Indian trust lands.	
That the interest on the said sum of $1,931.50, from August 14, 1861, to June 13, 1879, is the sum of.....	2,066 70
Amounting in all to.....	3,998 20

as the amount due the United States.

9. That the area embraced by military bounty-land warrants located by the said William Brindle, as receiver of public moneys and acting disbursing agent, after his said appointment, under said bonds, was $1,904,446\frac{86}{100}$ acres.

That the fees for locating the same, received by him from the holders of the warrants from April, 1857, to October 31, 1860, amounted in the aggregate to the sum of $47,661.18, at the rate of one dollar for each forty acres. That a moiety thereof is the

sum of.....	$23,830 59
That the amount of fees allowed and retained by the said William Brindle was.....	8,383 31
That the amount disallowed is the sum of....	15,447 28
And that the interest on the same from the respective dates, as above, is the sum of.....	18,373 08
Amounting in all to	33,820 36

10. That the defendant, as receiver of public moneys, received as the proceeds of the sales of public lands made by him from April, 1857, to May, 1861, the sum of $129,513.25. That the whole commis-

sion on this sum, at one per centum, amounted to the sum of..... $1,295 13
That he was allowed and paid by the United States on account of the same the sum of..... 658 85

That there was disallowed to him the sum of..... 636 28
That the interest on the said sum of $636.28, so disallowed from May 6, 1861, to June 13, 1879, is the sum of..... 691 10

Amounting in all to..... 1,327 38

11. That the defendant, as disbursing agent, paid out for various services and items the sum of..... $1,536 30
And that the said payments were proper and necessary to be made, and that claim for the same was made and disallowed.
That the interest on said sum amounts to the sum of..... 1,756 07

Amounting in all to..... 3,292 37

12. That an act of Congress was passed June 10, 1878, by which the sum of..... $4,713 00 was to be placed to the credit of the said William Brindle, as disbursing agent, and that the interest on said sum from January 26, 1861, to June 13, 1879, is the sum of..... 5,197 64

Making together the sum of..... 9,910 64

13. That the First Comptroller of the Treasury has, upon the account of the defendant, as receiver of public moneys, certified that the defendant was in-

debted to the United States on said account, on the 6th day of May, 1861, in the sum of $943.45.

That this sum is made up as follows:

First. The sum of $85.90, charged against defendant for fees for locating lands on military bounty-land warrants, which were not actually located by him under said warrants.

Secondly. With the sum of $618.20, for fees received by the defendant from November 1, 1860, to May 6, 1861, for locating military bounty-land warrants, and not credited by him to the United States, nor paid by him to them.

Thirdly. The amount of $239.35, being the amount which the defendant admitted in his final account as said receiver to be due to the United States.

Fourthly. That the interest on said.....	$239	35
From May 6, 1861, to June 13, 1879, is...	259	97
Making together the sum of.....	499	32

14. That while the defendant was acting as special receiver of Delaware Indian trust-land moneys he received for the sale of such lands the sum of $467,749.19.

That commissions on said sum, at one per centum, would amount to the sum of..	$4,677	49
That he was allowed for commissions on said sum.....	2,500	00
That he was disallowed the sum of....	2,177	49
Which, with the sum of.....	142	27
Makes	2,319	76
That the interest on said sum of $2,319.76, from March 23, 1857, to June 13, 1879, makes the sum of	3,092	85
Making together the sum of.....	5,412	61

15. That, while the defendant was acting as special

receiver of Kaskaskia and Peoria, Piankeshaw and Wea Indian trust-moneys, he sold 208,656$\frac{30}{100}$ acres of lands, for which he received the sum of $347,852.74. That the commissions on said sum, at one per centum, amounts to..... ..... $3,478 53
That he was allowed..... ..... 2,500 00
for commissions on said sales.

That he was disallowed the sum of..... 978 53
That the interest on said sum so disallowed, from May 6, 1861, to June 13, 1879, amounts to..... 1,062 84

Making in all..... 2,041 37

That the sum of..... $978 53
the amount so disallowed, deducted from the sum of. 2,073 77

Leaves the sum of..... ..... $1,095 24
That the interest on this sum of $1,095.24, from May 6, 1861, to June 13, 1879, amounts to 1,189 61

Which together amounts to the sum of. 2,284 85

16. That while the defendant was acting as special receiver of Indian trust-moneys, he paid out for the expenses of the sale of the Wea, &c., Indian trust-lands, the sum of..... ..... $3,783 37
Less the sum of..... 171 87

Leaving the sum of 3,611 50
And for the expenses of the sale of the Delaware Indian trust-lands the sum of..... 280 05

Making the sum of. 3,891 55

for which no credit was given to the defendant by the First Comptroller of the Treasury, which sums were necessarily expended by the defendant, as such special receiver, and are reasonable for the purposes for which the payments were made.

17. That for the labor and risk of making sales of Indian trust-lands, one per cent. commissions on the amount of such sales is a fair compensation.

A. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the defendant as receiver of public moneys and as acting disbursing agent, and also the accounts as special receiver of Indian moneys, and that the defendant is not entitled to any commissions on sales of Indian trust-lands, and that he is not entitled to the expenses incident to the sale of such lands, paid by him, and that he is not entitled to military bounty-land-warrant fees exceeding $2,500 per year, including commissions on cash sales of public lands, then the jury find for the plaintiff, and assess the damages at..... ..... $3,002 38

With interest thereon from May 6, 1861, to June 13, 1879..... 3,261 08

Amounting in all to..... 6,263 46

B. If the court should be of the opinion that the Second Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the defendant as special receiver of Indian trust-moneys, and that the defendant is not entitled to commission on sales of Indian trust-lands exceeding the sum of $2,500 for each sale of said lands, and that he is not entitled to military bounty-land-warrant fees exceeding $2,500 per year, including commissions on cash

sales of public lands, then the jury find for the defendant, and certify the amount due the defendant to be the sum of..... $3,460 25
With interest to June 13, 1879, amounting to..... .... 3,924 39

Making in all..... ..... 7,384 64

C. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys, and as acting disbursing agent, and also as special receiver of Indian trust-moneys, and that the defendant is entitled to commissions on sales of Indian trust-lands, exceeding the sum of $2,500 for each sale of said lands, and that he is entitled to the military bounty-land-warrant fees exceeding $2,500 per year, including commissions on cash sales on public lands, then the jury find for the defendant, and certify the amount due him to be the sum of..... $23,318 03
With interest to June 13, 1879, amounting to 27,661 16

Making together the sum of..... 50,979 19

D. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys, and as acting disbursing agent, and also as special receiver of Indian trust-moneys, and that the defendant is entitled to commissions on the sales of Indian trust-lands exceeding the sum of $2,500 for each sale of said lands, and that he is not entitled to military bounty-land-warrant fees exceeding $2,500 per year, including

commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of..... 86, 616 27
With interest to June 13, 1879..... 7, 925 51

Making together the sum of..... 14, 541 78

E. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the defendant as receiver of public moneys, and as acting disbursing agent, and also as special receiver of Indian trust-moneys, and that he is not entitled to commissions on sales of Indian trust-lands exceeding the sum of $2,500 for each sale of said lands, and that he is entitled to military bounty-land-warrant fees exceeding $2,500 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of..... 820, 162 01
With interest to June 13, 1879, amounting to..... 23, 660 04

Making together the sum of..... 43, 822 05

F. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant, as receiver of public moneys, and as acting disbursing agent, and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the defendant as special receiver of Indian trust-moneys, and that the defendant is entitled to commissions on sales of Indian trust-lands exceeding the sum of $2,500 for each sale of said lands, and that he is entitled to the military land-warrant fees exceeding $2,500 per year, including commissions on cash sales of public lands,

then the jury find for the defendant, and certify the amount due him to be the sum of.... ....$23,318 03
With interest to June 13, 1879, amounting to..... 27,661 16

Making together the sum of..... 50,979 19

G. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys, and as acting disbursing agent, and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the defendant as special receiver of Indian trust-moneys, and that the defendant is entitled to commissions on the sales of Indian trust-lands exceeding the sum of $2,500 for each sale of said lands, and that he is not entitled to military bounty-land-warrant fees exceeding $2,500 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of..... $6,616 27

With interest to June 13, 1879, amounting to..... ..... 7,925 51
Making in all..... 14,541 78

H. If the court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of defendant as receiver of public moneys, and as acting disbursing agent, and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the defendant as special receiver of Indian trust-moneys, and that he is not entitled to commissions on sales of Indian trust-lands exceeding the sum of $2,500 for each sale of

said lands, and that he is entitled to military bounty-land-warrant fees exceeding $2,500 per year, including commissions on cash sales of public lands, then the jury find for the defendant, and certify the amount due him to be the sum of..... $20, 162 01
With interest to June 13, 1879, amounting to 23, 660 04

Making together the sum of..... 43, 822 05

On this verdict the district court entered a judgment *pro forma* for the defendant "*to facilitate an early hearing in the Supreme Court, to which counsel inform the court the case will go*" (R., p. 14), and certified in accordance with the said act of Congress of 10th June, 1878, that there is a balance due the defendant by the United States of $50,979.19 with interest from 13th June, 1879.

Thereupon the United States sued out a writ of error from the circuit court to the said district court, and on the 21st October, 1880, the said circuit court affirmed the said judgment, (R., p. 15.)

ASSIGNMENT OF ERROR.

The district court should have entered judgment for the sum of $6,263.46, the principal and interest of the amount certified by the First Comptroller to be due by the defendant to the United States.

ARGUMENT.

The compact and lucid argument of John K. Valentine, Esq., United States attorney, who represented the United

States in the lower courts, is now presented in support of the writ of error.

William Brindle was appointed receiver of public moneys at Lecompton, Kansas, October 23, 1856, and continued in office until May 6, 1861.

His connection with the public and private sales of Delaware, Wea, &c., Indian ceded lands, was his official connection as receiver of public moneys under his appointment as such.

He did no official act and performed no official service outside of the duties of his office as receiver of public moneys, as prescribed by the laws and regulations and general and special instructions relative thereto.

In the adjustment of his accounts, Mr. Brindle was allowed the maximum compensation provided by law for receivers of public moneys, together with his per diem compensation for attending public sales at a distance from his office, and the expenses incident to such sales, and also the expenses of depositing moneys received by him.

The accounts of Mr. Brindle were adjusted in the same manner and upon the same principles as the accounts of all other receivers of public moneys are adjusted, and he received the same allowances as all other receivers.

His claims for additional compensation for the sale of Indian trust-lands, so called, and for fees for the location of military bounty-land warrants, were rejected on the ground that all allowances under either of the above heads that he was entitled to under the law had already been made to him.

Sundry incidental claims were also rejected upon the same ground.

An error exists in the statements of fact as presented by Mr. Brindle.

Commissions of one per cent. on sales of Indian

lands, so called, are not disallowed in the settlement of receivers' accounts, and were not disallowed in the settlement of Mr. Brindle's accounts. On the contrary, in computing the maximum compensation of registers and receivers, one per cent. commissions are computed upon all cash sales, irrespective of the character of the land sold.

What was disallowed in Mr. Brindle's accounts was his claim for double compensation.

The same is the accurate statement of facts in respect to fees on the location of military bounty-land warrants. Mr. Brindle claimed such fees in excess of his maximum compensation. It was the excess that was disallowed.

In making up registers' and receivers' accounts, the whole sum of the commissions allowed by law on cash sales, viz., one per cent., is allowed both on sales of ordinary public lands and on sales of Indian lands, so called; and the whole sum of fees received on military bounty-land-warrant locations, and the whole sum of all other fees and commissions which registers and receivers are entitled to have included in making up their maximum compensation are allowed to the full limit of such maximum.

Such allowances were made to Mr. Brindle up to said maximum limit. But the whole sum of such allowances to which Mr. Brindle would have been entitled had there been no statutory limit to his compensation would have greatly exceeded the maximum.

It is the excess over maximum that he claims. The maximum being established by law, such excess could not be allowed him.

It makes no difference to the settlement of a receiver's account whether the lands sold are Indian ceded or "trust" lands, so called, or ordinary public lands.

If the local land officers had no other business than that connected with the sale of such Indian lands, their entire compensation would be allowed from the one per cent. commissions upon such sales.

If their business, including sales of Indian ceded or "trust" lands, gave them in the total of fees and commissions not more than the maximum compensation provided by law, they would receive the whole amount of such fees and commissions.

When the fees and commissions arising from ordinary public-land business amount, with the salary, to the maximum compensation, it is not customary to make a charge against the Indian fund for any portion of the commissions. But this is a matter of generosity to the Indian fund; it is not a deprivation of rights to registers and receivers. They can have and do receive their legal compensation—however derived. They cannot have an illegal compensation.

They receive $3,000 a year once; they do not receive the same sum twice in the same year.

By the act of April 20, 1818, (3 Stat., 466,) March 22, 1852, section 3, (10 Stat., 4,) March 3, 1853, (10 Stat., 204,) March 3, 1855, (10 Stat., 635,) the maximum compensation of registers and receivers, for their official services of every nature, is limited to $3,000 a year each.

The act of February 2, 1859 (11 Stat., 378), was confirmatory of prior acts and of the uniform constructions thereunder, during a period of more than forty years.

In the case of the United States *vs.* Babbit, and the same *vs.* Coles, the United States Supreme Court decided that registers (and hence receivers also) were not entitled to a total compensation in excess of the maximum fixed by law. (Black, v. 1, p. 55.)

No moneys received by receivers of public moneys

in their official capacity, as officers of the United States, are "private moneys." (See act March 3, 1849, 9 Stat., 398; also United States *vs.* Babbit, &c.; also act March 3, 1855, 10 Stat., 204.)

No moneys so received have been regarded or treated as "private moneys" since April 20, 1818, except in the case of fees received for reducing testimony to writing, which special fees were, at the time Mr. Brindle was receiver, allowed to be retained in lieu of clerk hire. Such fees were so allowed to be retained by Mr. Brindle.

There is no difference in the terms of the law as applying to registers' and receivers' compensation, or in the practice of the settlement of their accounts between military bounty land-warrant-fees and pre-emption or other fees which enter into the computation of such compensation. And there is no difference between fees and commissions, except as to certain classes of fees which registers and receivers are not entitled to have computed as a part of their compensation. All fees in every class of entry or location are paid by the party making such entry or location.

The opinion of Attorney-General Stanton, dated January 17, 1861, is not accepted by the Executive Departments of the Government as a correct exposition of the law, and is not binding upon their action. It was, moreover, invalidated by the subsequent decision of the U. S. Supreme Court in the cases of Babbit and Coles.

In rejecting the claim of the State of Iowa for an allowance of five per cent. on the cash value of lands, at $1.25 per acre, located in that State, with military bounty-land warrants, the Secretary of the Interior had no reference to location-fees. The State claimed five per cent. on the cash value of the lands located. It made no claim for a percentage on the fees received for such locations. It was upon the

claim as made by the State that the Secretary's decision was rendered. He made no decision upon points not presented by the State.

By article 1 of the treaty made with the Delaware tribe of Indians, May 6, 1854 (10 Stat., 1048), said tribe ceded, relinquished, and quitclaimed to the United States all their right, title, and interest in and to the lands described in said treaty.

By article 2 of the treaty made with the tribes of Kaskaskia and Peoria Indians, and of Piankeshaw and Wea Indians, May 30, 1854 (v. 10, p. 1082), said Indians ceded and conveyed to the United States all their right, title, and interest in and to the lands described in said treaty.

The foregoing articles of said treaties executed themselves. They operated without the aid of any legislative provisions. They concluded the question of title.

The terms of cession were absolute, and without condition precedent, except as to a particular tract mentioned in article 3 of the treaty with the Delawares of May 6, 1854.

By these treaties the Indian title to said lands vested immediately, and, except as to the tract mentioned in said article 3, unreservedly in the United States.

By the fulfillment by the United States of the condition mentioned in said article 3, the Indian title to the particular tract mentioned in said article was also finally extinguished.

Said treaties provided that the ceded lands should be surveyed and sold in a particular manner, and that the net proceeds thereof should be applied in a particular manner to the benefit of said Indians.

These provisions were conditions subsequent, and did not affect the validity of the title conveyed to the United States by the express terms of relinquishment

and cession contained in article 1 of the treaty of May 6, and article 2 of the treaty of May 30, 1854.

If the United States failed to comply with any or all of the conditions subsequent, the Indians could have claimed their right to demand a specific performance, or they might have claimed damages for nonfulfillment, but in no event could they have claimed a forfeiture of the ceded lands.

An action of ejectment could not lie against any purchaser from the United States because of the failure of the United States to comply with the conditions subsequent.

The Indian title was absolutely extinguished by the terms of cession, and the lands became, so far as the Indians were concerned, the absolute property of the United States.

All lands belonging to the United States are the "public lands" of the United States, whether derived by conquest or occupation, by purchase or by cession, from any State or foreign nation or Indian tribe. (See chap. 46, act March 3, 1807, 2d Stat., p. 445, and treaties, Delawares, article 16, Weas, &c., article 8.)

The ground upon which the United States obtains title, or assumes jurisdiction, is immaterial. The complete acquisition of title by the United States, as against all adverse claimants, is the essential fact necessary to establish the character of any lands as the public lands of the United States.

Lands ceded absolutely to the United States by Indian tribes cease to be Indian lands by the fact of cession.

When the treaty stipulates, by condition subsequent, that the proceeds of sales, or any part thereof, shall be paid over to or be held in trust for the tribe, it is the proceeds of the sale, that is to say, the money, that constitutes the trust, not the land.

The control of the land then belongs to the land department of the Government—the final custody of the money to the Indian department.

The land department disposes of the land, and the Indian department controls only the fund derived therefrom, and accounted for to the Indian department.

"The legal title, domain, and jurisdiction are in the United States, but the equitable beneficiary interest in the proceeds of the sales is in the Indians." (Op. Attorney-General, 6, 660.)

Indian trust-lands are legally and properly lands to which a trust attaches as a condition precedent to the investiture of title in the United States.

Where no such trust attaches, the lands are legally and properly public lands, and are not trust-lands in any legal sense, notwithstanding a trust may attach to the proceeds of the sales of such lands.

Where there is a trust in the proceeds, it becomes necessary for the land department and accounting officers of the Government to keep all accounts and records relating to such sales and proceeds separate and distinct from the records and papers relating to public lands, to the proceeds of which no such trust attaches.

If the land department and accounting officers of the Government choose to apply the term "Indian trust-lands" to lands in the proceeds of which there is a trust, and adopt such term for brevity and for convenience in preserving such separation of the accounts as may be necessary in order to prevent moneys derived from the sales of lands, in which moneys a trust exists, from being merged with money derived from the sales of other lands, in the proceeds of which no such trust exists, such technical description does not indicate an actual trust in the lands, nor alter in any manner the legal fact that the lands technically

described as trust-lands are actually the public lands of the United States.

The legal status, then, of so-called "Indian trust-lands," where the trust attaches to the proceeds and not to the lands, is actually and absolutely that of "public lands."

There is no legal difference, therefore, between Indian trust-lands of the character specified and other public lands of the United States.

The difference lies in the disposal of the proceeds of the lands, not in the disposal of the lands themselves.

Indian ceded lands, to the proceeds of which a trust exists, are usually excepted by treaty stipulations from the operation of the pre-emption laws, since, without such exemption, or without some specific statutory provision to the contrary, they would be subject to pre-emption under the general law which grants pre-emption rights to all lands belonging to the United States to which the Indian title is extinguished. (R. S., sec. 2257.) Were the fact otherwise, there would be no occasion for such treaty exceptions or statutory provisions.

All the specific provisions of the statutes, and the theory running all through the whole body of the laws relating to public lands, including Indian ceded lands, give to the land department the control of such ceded lands.

The Commissioner of Indian Affairs is by statute (R. S., sec. 463) charged, under the direction of the Secretary of the Interior, &c., with the management of all Indian affairs and of all matters arising out of Indian relations.

Lands derived from the Indians cease to be Indian lands when conveyed to the United States, and the affairs and relations pertaining thereto cease, there-

fore, to be Indian affairs or relations, and become public-land affairs and public-land relations.

All accounts and vouchers for claims and disbursements connected with Indian affairs are to be transmitted to the Commissioner of Indian Affairs for administrative examination, and by him passed to the proper accounting officer of the Treasury for settlement. (R. S., sec. 464.)

Moneys accruing from the sale of Indian ceded lands do not become Indian moneys until paid over to the proper Indian fund after the final settlement of the accounts pertaining thereto.

All public accounts relative to the public lands are audited and settled by the Commissioner of the General Land Office, subject to final revision by the First Comptroller of the Treasury. (R. S., sec. 456.)

The Commissioner of the General Land Office is therefore the auditor of all public-land accounts, including accounts of sales of lands ceded to the United States by Indian tribes.

The First Comptroller of the Treasury examines the accounts settled by the Commissioner of the General Land Office. (R. S., sec. 269.)

The Second Auditor settles the accounts relating to Indian affairs, and such accounts are examined by the Second Comptroller. (R. S., sec. 277, Part 2; sec. 273, Part 1.)

In passing to the Second Auditor for settlement an account in favor of William Brindle for compensation for selling Indian lands, the Commissioner of Indian Affairs exceeded his administrative powers.

Mr. Brindle was not an officer of the Indian department. He was not appointed as such, he was not instructed as such, and he gave no bonds as such to the United States, and he was not in any manner accountable to the Commissioner of Indian Affairs.

He was an officer of the land department. He was appointed, confirmed, and commissioned as such, gave bonds as such, was instructed as such, performed his duties as such, and as such was accountable to the Commissioner of the General Land Office for his official conduct.

The Commissioner of Indian Affairs has no jurisdiction over land officers, and no administrative powers relative to their accounts.

In acting upon any accounts of land officers, the Second Auditor and Second Comptroller exceeded their authority and assumed a jurisdiction not conferred upon them by statute or recognized by official usages or established precedents.

Such accounts are without legal validity and can have no standing in court; neither can they be considered as precedents to authorize a repetition of similar illegal procedure.

Article 2 of the treaty with the Delaware, and article 4 of the treaty with the Wea, &c., Indians, provided for the disposal of the ceded lands by public and private sale in the same manner as prescribed by law for the sale of public lands.

The method provided by law for the sale of public lands is through the land officers of the United States, under instructions from, and by returns made and accounts rendered to, the Commissioner of the the General Land Office, who audits the accounts and transmits the same to the First Comptroller for final settlement.

The method of sale prescribed carries with it the method of accounting for the money derived from such sale.

By act of Congress of January 9, 1837 (Stat., 5, page 135), to regulate the disposal of the proceeds of Indian ceded lands, it was provided that all moneys that had been or might thereafter be received from the

sale of such lands, after deducting expenses, should be paid into the Treasury of the United States "in the same manner that moneys received from the sales of public lands are paid into the Treasury."

The manner in which moneys received from the sales of public lands are paid into the Treasury comprehend the statement of accounts therefor by the Commissioner of the General Land Office, and the final settlement of the same by the First Comptroller of the Treasury.

Sales of Indian ceded lands are therefore properly and legally made by the land officers of the Government in the same manner as sales of other public lands, unless a different method is specifically provided by special statute or treaty stipulation, and receivers of public moneys are therefore properly held accountable under their usual official bonds for all moneys so received by them, and their accounts are properly and legally settled in the same manner and by the same officers as their accounts pertaining to moneys received from the disposal of other public lands.

The force and effect of the articles of the treaties with the Delaware, Wea, &c., Indians, ceding their lands to the United States and fixing the legal status of the land derived by the United States thereunder; the specific provisions of the treaties relative to the method of selling the ceded lands, which involves the method of accounting for the proceeds thereof, and the general statute regulating the custody; and hence, also, the processes of accounting for the money so derived, alike placed the duty, responsibility, and authority of the settlement of accounts relative to such lands upon the Commissioner of the General Land Office and the First Comptroller of the Treasury.

Mr. Brindle's accounts were therefore properly settled by the above-named officers.

If the view taken in the foregoing argument be correct, the First Comptroller of the Treasury was the proper officer to state and certify the accounts of the defendant as receiver of public moneys, and as acting disbursing agent, and as special receiver of Indian moneys.

By the transcript of accounts, as certified by the said First Comptroller, after deducting the sum of $4,713, allowed under the act of June 10, 1878, and other deductions, the amount found due by the defendant to the United States was the sum of..... $3,002 38

Interest thereon from May 6, 1861, to June 13, 1879, was..... 3,261 08

Amounting in all to..... ..... 6,263 46

And for this sum judgment should be entered on the special verdict in favor of the United States and against the defendant.

It is respectfully submitted that the judgment must be reversed, with directions to enter judgment on the verdict for the amount certified by the First Comptroller.

WILLIAM A. MAURY,
Assistant Attorney-General.

110-688

110-688

No. 216

IN THE

Supreme Court of the United States.

October Term. 1881.

THE UNITED STATES OF AMERICA,
Plaintiff in error, and Plaintiff below,

vs.

WILLIAM BRINDLE,
Defendant in error, and Defendant below.

The Special Verdict and Argument

for

WILLIAM BRINDLE, Defendant in Error.

R. T. MERRICK,
JOHN H. SLOAN,
Attorneys for Deft. in error.

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SUPREME COURT OF THE UNITED STATES.

THE U. S. OF AMERICA,
Plaintiff in Error
and Plaintiff Below,

vs.

WM. BRINDLE,
Defendant in Error
and Defendant Below.

October Term, 1881.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

HISTORY OF THE CASE.

Wm. Brindle, the Defendant in error, on September 13th, 1856, was Commissioned a Receiver of Public Moneys, "for lands subject to sale at Lecompton, Kansas Territory," and also Disbursing Agent, "for the payment of Salaries, Commissions, Incidental and other expenses of the Receiver's Office, and that of the Register for the District of Lands, subject to sale, at Lecompton, K. T.," until the end of the next Session of the Senate of the U. S., as may be seen on pages 127 & 128 of the Digest, &c.

The Pawnee District Land Office, at Lecompton, K. T., had not been opened, when the Defendant in error, on October 23d, 1856, executed Bonds as Receiver of Public

Moneys, and as Disbursing Agent for the District of Lands SUBJECT to SALE at Lecompton, K. T. No moneys were received, nor business done under this Commission, and the bonds executed in October, 1856, nor could the Defendant in error obtain a Copy of them; he was informed that NO such Bonds could be found on file, although he holds the letter of the Commissioner of the General Land Office acknowledging the receipt of them; it reads as follows: "General Land Office, November 28th, 1856, Sir: Your Official Bonds have been approved. Very Respectfully, T. A. Hendricks, Commissioner."

Before the Land Office at Lecompton, K. T., had been opened, or Wm. Brindle, the Defendant in error, had performed any service as Receiver of Public Moneys, he was appointed on October 24th, 1856, by the Secretary of the Interior, a SPECIAL Receiver, and Superintendent of the sale of the Delaware Indian Trust Lands at Fort Leavenworth, K. T., within a Military Reservation, under the Delaware Indian Treaty of May 6th, 1854 (10 Stat., 1048). The appointment and instructions, given by the Indian Office on the 29th of October, 1856, may be seen on pages 128 to 130 of the Digest, &c.

The time necessarily occupied in selling the Delaware Indian Trust Lands, and in making up the papers of the sale, was from November 17th, 1856, to March 23d, 1857.

On the 23d of February, 1857, the President of the United States, by and with the advice and consent of the Senate, re-appointed Wm. Brindle, the Defendant in error, Receiver of Public Moneys "for lands SUBJECT to sale at Lecompton, K. T.," and also Disbursing Agent, "for the payment of Salaries, Commissions, Incidental and other expenses of the Receiver's Office, and that of the Register, for the District of Lands, SUBJECT to sale at Lecompton, K. T." Bonds under these appointments were executed on the 19th of March, 1857, for the term of Four Years, commencing from the time he entered on the discharge of his duties. (Act No. 146, of February 24th, 1855, 10 Stat., 615.)

In April, 1857, Wm. Brindle, the Defendant in error,

went to Lecompton, K. T., and opened the Land Office for the District of Lands, SUBJECT to sale at Lecompton, K. T., in the Pawnee Land District.

On May 15th, 1857, Wm. Brindle, the Defendant in error, was again appointed by the Interior Department, a SPECIAL Receiver and Superintendent, to conduct the sale of the Kaskaskia and Peoria, Piankeshaw and Wea, Indian Trust Lands, at Paola, K. T., in the Indian Reservation of the United Tribe of the Wea, &c., Indians, to commence on June 24th, 1857, and was instructed to prepare to close his Office at Lecompton, K. T., and repair to the Wea, &c., Indian Country, about sixty miles south of Lecompton, K. T., preparatory to that sale of Wea, &c., Indian Trust Lands, under the Wea, &c., Indian Treaty of May 30th, 1854 (10 Stat., 1082). The Notice of the appointment, and the instructions of the Indian Office, sent to the Defendant in error, by which he was to govern that sale, may be seen on pages 132 to 134 of the Digest, &c.

The time necessarily occupied in selling the Wea, &c., Indian Trust Lands, and in making up the papers of the sale was from June 24th, 1857, to August 24th, 1857.

On September the 1st, 1857, the District Land Office at Lecompton, K. T., was permanently opened, and the services of the Defendant in error, as Receiver, &c., of Public Moneys, "for lands subject to sale at Lecompton, K. T.," in the Pawnee Land District, continued until May 6th, 1861, when he was relieved, under his resignation of February 20th, 1861.

Wm. Brindle, the Defendant in error, held Official statements of an admitted balance due to him; but the Books of the Treasury stated a balance due by him, and as he could NOT get a legal settlement of his Accounts, he requested the Solicitor of the Treasury in 1877 to bring suit against him at Philadelphia, Pa., where he resided, which was done on May 23d, 1877, in the District Court of the U. S. for the Eastern District of Pennsylvania, at Philadelphia, No. 4, of May Session, 1877.

On the 10th of June, 1878, Congress passed An Act

(see *Digest, &c.*, pp. 2 and 3, or 20 *Stat.*, 541,) prohibiting the suit from being withdrawn or abandoned, without the written request or consent of the Defendant in error, and it authorized the Court to permit Wm. Brindle, the Defendant in error, to make defense and claim set-off, and required the Court to hear and determine all DISPUTES and DIFFERENCES between the U. S. and the Defendant in error, in reference to his various Accounts as Receiver and Disbursing Agent of Public Moneys, in the Pawnee Land District at Lecompton, K. T., and also in relation to his Accounts "as SPECIAL Receiver, &c., of Indian Trust Moneys received and expended" under the Indian TREATIES of May 6th, and 30th, 1854, *with the same effect as if said suit were commenced by an individual against the said Wm. Brindle.*

On the 13th June, 1879, a Jury of the said District Court found a SPECIAL Verdict, in which certain questions of law were raised and submitted for the decision of the Court. On April 20th, 1880, the District Court of the U. S. decided those questions of law submitted to it for its opinion, in favor of the Defendant in error, and ordered a judgment to be entered in his favor for $50,979.19, with interest from June 13th, 1879. (See paragraph "F" of the Special Verdict.)

The U. S., on a Writ of error, carried the case up to the Circuit Court of the U. S., for the Eastern District of Pennsylvania, at Philadelphia; where, on October 21st, 1880, said Court, on the printed arguments of the parties,—submitted in June, 1880,—affirmed the decree of the District Court, in favor of Wm. Brindle, the Defendant in error, and ordered judgment to be entered in his favor for $50,979.19, with interest from June 13th, 1879, No. 2, of October Session, 1880.

The U. S., in January, 1881, carried the cause up to the Supreme Court of the U. S., on a Writ of error, returnable at the October Term of 1881.

The suit of the *U. S.* vs. *Wm. Brindle*, the Defendant in error, was brought on a Certified statement of the First Comptroller of the Treasury, as made on May 8th, 1861, erroneously claiming $8,170.45, to be due to the

Wea, &c., Indians, from the Defendant in error, on account of the sale of Wea, &c., Indian Trust Lands; and also $137.78, erroneously claimed to be due to the Delaware Indians, on account of the sale of Delaware Indian Trust Lands. (See page 152 of the *Digest, &c.;*) and the sum of $943.45, erroneously claimed to be due to the U. S. on account of the sale of U. S. lands; making in the aggregate the sum of $9,251.68, erroneously claimed to be due by the Defendant in error. This suit was brought on the Official Bond of March 19th, 1857, of Wm. Brindle, the Defendant in error, as Receiver of Public Moneys, "for lands SUBJECT to sale at Lecompton, K. T."

The Defendant in error demurred to the petition of the U. S. for the following reasons:

1st. That the petition was not made in conformity to law, inasmuch as the First Comptroller of the Treasury is not and was not an Officer charged by law with the Statement of the Accounts of the Defendant in error, as SPECIAL Superintendent to conduct the sales of the Delaware and Wea, &c., Indian Trust Lands in Kansas Territory in 1856 and in 1857, and as SPECIAL Receiver of the Moneys arising therefrom; and that he never did state those Accounts of Delaware and Wea, &c., Indian Trust Moneys *received* and *expended;* and therefore the Statements of the Indian Trust Moneys, by the First Comptroller are NOT such Statements as can be received as valid by the Court.

2d. That Wm. Brindle, the Defendant in error, was NOT indebted to the U. S. as Trustee of the Delaware and Wea, &c., Indian Trust Moneys, as shown by the Statements of the Defendant in error's Accounts of Delaware, and Wea, &c., Indian Moneys, as made by the Second Auditor and the Second Comptroller on August 14th and 19th, 1861, by which the differences in dispute are clearly shown, as may be seen in paragraphs 14 and 15 of the Special Verdict.

3d. That the Defendant in error was NOT indebted to the U. S. as Receiver of Public Moneys and Disbursing Agent for lands SUBJECT to sale at Lecompton,

K. T., in 1857, 1858, 1859, 1860, and until May 6th, 1861, as is shown by paragraphs 9, 10, 11 and 12 of the Special Verdict; and by which the disputes and differences between the U. S. and the Defendant in error, on his Accounts of Public Moneys received and expended, or disbursed are fully shown.

The Special Verdict found by the Jury on June 13th, 1879, in the District Court of the U. S. for the Eastern District of Pennsylvania is as follows:

SPECIAL VERDICT.

1. That William Brindle, the Defendant, was duly appointed Receiver of Public Moneys for the district of lands subject to sale at Lecompton, in the Territory of Kansas, for the term of four years from the 18th day of February, 1857, by commission bearing date the 20th day of February, 1857.

2. That as such Receiver he gave bond to the United States in the sum of $50,000, dated the 19th day of March, 1857, conditioned that if he had truly and faithfully executed and discharged, and should continue faithfully to execute and discharge all the duties of the said office, according to law, then the said obligation to be void, otherwise to remain in full force and virtue.

3. That prior to the 19th day of March, 1857, the said William Brindle was duly appointed Acting Disbursing Agent, and that on the said date he gave a bond in the sum of $5,000, conditioned for the faithful performance of the duties of the said office.

4. That on the 24th of October, 1856, the said William Brindle was duly appointed Special Receiver and Superintendent to assist the Special Commissioner to dispose of the Delaware Indian Trust Lands at Fort Leavenworth, in the said Territory of Kansas, under the Treaty with the Delaware Tribe of Indians.

5. That on May 15th, 1857, the said William Brindle was duly appointed as Special Receiver and Superintendent

to assist the Special Commissioner to dispose of the Trust Lands of the Kaskaskia and Peoria, Piankeshaw, and Wea Indian Confederated Tribes of Indians at Paoli, Kansas Territory.

6. That in pursuance of said appointments the said William Brindle made sales of certain Indian lands, and of certain Public lands, and received and disbursed certain Indian and Public moneys.

7. That the First Comptroller of the Treasury, in a transcript of account dated May 8th, 1861, duly certified, charged the said defendant with the sum of . $8,170.45
on account of Wea, &c., Indian Lands.
Also, with the sum of 137.78
on account of Delaware Indian Lands.
And also with the sum of 943.45
on account of sale of Public Lands.
Making in the aggregate, ... $9,251.68

That the said First Comptroller in a further adjustment of the said account reduced the said account by crediting the said William Brindle with the sum of 4,713.00
mentioned in the Act of Congress passed June 10th, 1878, stating as a balance against him the sum of $4,538.68

That the interest on said sum from May 6th, 1861, to June 13th, 1879, is 4,929.76

Amounting in all to $9,468.44

8. That the Second Comptroller of the Treasury, in a transcript of account dated 19th August, 1861, duly certified, charged that the said William Brindle was indebted to the United States in the sum of . . . $2,073.77
on the Wea, &c., Indian account.
And that there was due the said William Brindle on account of the Delaware Indian account . 142.27
And that the said William Brindle was indebted to the United States in the sum of . . $1,931.50

on his joint account as Special Receiver of Indian Trust Lands.

That the interest on the said sum of $1,931.-50, from August 14th, 1861, to June 13th, 1879, is the sum of 2,066.70

Amounting in all to $3,998.20

As the amount due the United States.

9. That the area embraced by Military Bounty Land Warrants located by the said William Brindle as Receiver of Public Moneys and Acting Disbursing Agent after his said appointment, under said bonds, was 1,904,446.86–100 acres.

That the fees for locating the same, received by him from the holders of the warrants from April, 1857, to October 31st, 1860, amounted in the aggregate to the sum of $47,661.18, at the rate of one dollar for each forty acres. That a moiety thereof is the sum of . . . $23,830.59

That the amount of fees allowed and retained by the said William Brindle was . . 8,383.31

That the amount disallowed is the sum of . . $15,447.28

And that the interest on the same from the respective dates, as above is the sum of . . . 18,373.08

Amounting in all to $33,820.36

10. That the Defendant, as Receiver of Public Moneys, received as the proceeds of the sales of Public lands made by him from April, 1857, to May, 1861, the sum of $129,513.-25. That the whole commission on this sum at one per centum amounted to the sum of $1,295.13

That he was allowed and paid by the United States on account of the same the sum of . 658.85

That there was disallowed to him the sum of . $636.28

That the interest on the said sum of $636.28, so disallowed from May 6th, 1861, to June 13th, 1879, is the sum of 691.10

Amounting in all to $1,327.38

11. That the Defendant, as Disbursing Agent, paid out for various services and items the sum of . . $1,536.30
And that the said payments were proper and necessary to be made, and that claim for the same was made and disallowed.
That the interest on said sum amounts to the sum of 1,756.07

Amounting in all to $3,292.37

12. That an Act of Congress was passed June 10th, 1878, by which the sum of . . . . . $4,713.00 was to be placed to the credit of the said William Brindle as Disbursing Agent, and that the interest on said sum from January 26th, 1861, to June 13th, 1879, is the sum of 5,197.64

Making together the sum of $9,910.64

13. That the First Comptroller of the Treasury has upon the account of the Defendant as Receiver of Public Moneys, certified that the Defendant was indebted to the United States on said account on the 6th day of May, 1861, in the sum of $943.45.

That this sum is made up as follows:

First, the sum of $85.90 charged against Defendant for fees for locating lands on Military Bounty Land Warrants, which were not actually located by him under said warrants.

Secondly, with the sum of $618.20 for fees received by the Defendant from November 1st, 1860, to May 6th, 1861, for locating Military Bounty Land Warrants, and not credited by him to the United States, nor paid by him to them.

Thirdly, the amount of $239.35 being the amount which the Defendant admitted in his final account as said Receiver to be due the United States.

Fourthly, that the interest on said . .	$239.35
from May 6th, 1861, to June 13th, 1879, is .	259.97
Making together the sum of	$499.32

14. That while Defendant was acting as Special Receiver of Delaware Indian Trust Land moneys he received for the sale of such lands the sum of $467,749.19.

That commissions on said sum at one per centum would amount to the sum of . . .	$4,677.49
That he was allowed	2,500.00
for commissions on said sum.	
That he was disallowed the sum of . . .	$2,177.49
Which with the sum of	142.27
Makes	$2,319.76
That the interest on said sum of $2,319.76, from March 23d, 1857, to June 13th, 1879, makes the sum of	3,092.85
Making together the sum of	$5,412.61

15. That while the Defendant was acting as Special Receiver of Kaskaskia and Peoria, Piankeshaw and Wea Indian Trust moneys, he sold 208,656,.30-100 acres of lands, for which he received the sum of $347,852.74.

That the commissions on said sum at one per centum amounts to	$3,478.53
That he was allowed	2,500.00
for commissions on said sales.	
That he was disallowed the sum of . . .	978.53
That the interest on said sum so disallowed from May 6th, 1861, to June 13th, 1879, amounts to	1,062.84
Making in all	$2,041.37

That the sum of	$978.53	
the amount so disallowed, deducted from the sum of	2,073.77	
Leaves the sum of		$1,095.24
That the interest on this sum of $1,095.24, from May 6th, 1861, to June 13th, 1879, amounts to .		1,189.61
Which together, amounts to the sum of . .		$2,284.85

16. That while the Defendant was acting as Special Receiver of Indian Trust Moneys he paid out for the expenses of the sale of the Wea, &c., Indian Trust Lands, the sum of $3,783.37
Less the sum of 171.87

Leaving the sum of $3,611.50
And for the expenses of the sale of the Delaware Indian Trust Lands the sum of . . . 280.05

Making the sum of $3,891.55
for which no credit was given to the Defendant by the First Comptroller of the Treasury, which sums were necessarily expended by the Defendant, as such Special Receiver, and are reasonable for the purposes for which the payments were made.

17. That for the labor and risk of making sales of Indian Trust Lands one per cent. commissions on the amount of such sales is a fair compensation.

A. If the Court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the Defendant as Receiver of Public Moneys and as Acting Disbursing Agent, and also the accounts as Special Receiver of Indian Moneys, and that the Defendant is not entitled to any commissions on sales of Indian Trust Lands, and that he is not entitled to the expenses incident to the sale of such lands paid by him, and

that he is not entitled to Military Bounty Land Warrant Fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the Plaintiff, and assess the damages at $3,002.38
With interest thereon from May 6th, 1861, to June 13th, 1879, ... 3,261.08

Amounting in all to $6,263.45

B. If the Court should be of the opinion that the Second Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the Defendant as Special Receiver of Indian Trust Moneys, and that the Defendant is not entitled to commissions on sales of Indian Trust Lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is not entitled to Military Bounty Land Warrant Fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the Defendant and certify the amount due the Defendant to be the sum of $3,460.25
With interest to June 13th, 1879, amounting to . 3,924.39

Making in all $7,384.64

C. If the Court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of Defendant, as Receiver of Public Moneys, and as Acting Disbursing Agent, and also as Special Receiver of Indian Trust Moneys, and that the Defendant is entitled to commissions on sales of Indian Trust Lands, exceeding the sum of $2,500 for each sale of said lands, and that he is entitled to the Military Bounty Land Warrant Fees exceeding $2,500 per year, including commissions on cash sales on public lands, then the jury find for the Defendant, and certify the amount due him to be the sum of $23,318.03
With interest to June 13th, 1879, amounting to 27,661.16

Making together the sum of $50,979.19

D. If the Court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of Defendant as Receiver of Public Moneys, and as Acting Disbursing Agent, and also as Special Receiver of Indian Trust Moneys, and that the Defendant is entitled to commissions on the sales of Indian Trust Lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is not entitled to Military Bounty Land Warrant Fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the Defendant, and certify the amount due him to be the

sum of	$6,616·27
With interest to June 13th, 1879, . . .	7,925·51
Making together the sum of	$14,541·78

E. If the Court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of the Defendant as Receiver of Public Moneys, and as Acting Disbursing Agent, and also as Special Receiver of Indian Trust Moneys, and that he is not entitled to commissions on sales of Indian Trust Lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is entitled to Military Bounty Land Warrant Fees exceeding $2,500.00 per year, including commissions on cash sales of public lands, then the jury find for the Defendant, and certify the amount due him to be the sum of $20,162·01

With interest to June 13th, 1879, amounting to	23,660·04
Making together the sum of	$43,822·05

F. If the Court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of Defendant, as Receiver of Public Moneys, and as Acting Disbursing Agent, and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the Defendant as

Special Receiver of Indian Trust Moneys, and that the Defendant is entitled to commissions on sales of Indian Trust Lands exceeding the sum of $2,500.00 for each sale of said lands, and that he is entitled to the Military Bounty Land Warrant Fees exceeding $2,500.00 per year, including commissions on cash sales of Public Lands, then the jury find for the Defendant, and certify the amount due him to be the sum of $23,318.03
With interest to June 13th, 1879, amounting to 27,661.16

Making together the sum of $50,979.19

G. If the Court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of Defendant as Receiver of Public Moneys, and as Acting Disbursing Agent, and that the Second Comptroller of the Treasury was the proper officer authorized by law to state the account of the Defendant, as Special Receiver of Indian Trust Moneys, and that the Defendant is entitled to commissions on the sales of Indian Trust Lands exceeding the sum of $2,500.00, for each sale of said lands, and that he is not entitled to Military Bounty Land Warrant Fees exceeding $2,500.00 per year, including commissions on cash sales of Public Lands, then the jury find for the Defendant, and certify the amount due him to be the sum of $6,616.27
With interest to June 13th, 1879, amounting to 7,925.51

Making in all $14,541.78

H. If the Court should be of the opinion that the First Comptroller of the Treasury was the proper officer authorized by law to state the accounts of Defendant, as Receiver of Public Moneys, and as Acting Disbursing Agent, and that the Second Comptroller of the Treasury was the proper officer, authorized by law, to state the account of the Defendant, as Special Receiver of Indian Trust Moneys, and that he is not entitled to commissions on sales of Indian Trust Lands

exceeding the sum of $2,500.00 for each sale of said lands, and that he is entitled to Military Bounty Land Warrant Fees exceeding $2,500.00 per year, including commissions on cash sales of Public Lands, then the jury find for the Defendant, and certify the amount due him to be the sum of

. . . . .	$20,162.01
With interest to June 13th, 1879, amounting to	23,660.04
Making together the sum of . . .	$43,822.05

Having stated the case, we will now proceed to argue the Three questions, raised for the opinion of the Court.

ARGUMENT.

First.—The first question raised by the special verdict is, Who were the proper officers, authorized by law, to state the Accounts of the Defendant in error as Receiver of Public Moneys, and also his accounts as Special Receiver of Indian Trust Moneys?

1st.—As to the Accounts of the Defendant in error, as Receiver of Public Moneys and Disbursing Agent, the law provides as follows:

The Act of April 25th, 1812, (2d. Stat., 716,) created a Land Office in the Treasury Department. It required all *returns* relative to the *Public Lands* to be made to the Commissioner of the General Land Office, instead of to the Secretary of the Treasury. It also made it the duty of the Commissioner to settle such accounts, certify the balances and transmit the accounts, with the vouchers, to the 1st Comptroller.

The Act of July 4th, 1836, (5th, Stat., 107,) re-organized the General Land Office; but no change was made in the mode of making the returns relative to the public lands or the mode of settling public land accounts.

The Act of March 3d, 1849, (9th, Stat., 395,) to establish the Home Department, by Sec. 3, the Secretary of the

Interior was required to perform all of the duties in relation to the General Land Office, then discharged by the Secretary of the Treasury, &c.

These Acts were in force during the term of the Defendant in error; and were the acts from which Congress made the following Section of the Revised Statutes:

Section 456.—All *returns* relative to the public lands shall be made to the Commissioner of the General Land Office; and he shall have power to audit and settle all public accounts relative to *public lands*, and certify balances and transmit accounts, vouchers, &c., and certificate to the 1st Comptroller.

The foregoing enactments show that it was the duty of the 1st Comptroller to settle the Public Land Accounts of the Defendant in error as Receiver and Disbursing Agent of Public Moneys; and they were so settled.

2d.—AS to the Accounts of the Defendant in error, as Special Receiver of Indian Trust Moneys, the law provided as follows:

The Act of August 7th, 1789, (1st, Stat., 49,) created the office of Secretary of War, who was required among other duties to perform such as related "to Indian affairs."

The Act of May 8th, 1792, (1st, Stat., 279,) made alterations in the Treasury and War Departments, and created "an Accountant to the Department of War," who was authorized to settle all accounts relative to "the incidental and contingent expenses of the Department," &c. The Act of April 29th, 1816, (3d, Stat., 322,) created "an additional Accountant in the Department of War."

The Act of March 3d, 1817 (3d, Stat., 366), "to provide for the prompt settlement of public Accounts," abolished the office of Accountant and additional Accountant of the Department of War. It created Four additional Auditors, and one additional Comptroller, in the Treasury Department. It made it the duty of the 2d Auditor *to receive* all accounts relative "to the contingent expenses of the War Department," &c. It required the 2d Auditor to examine

the accounts, certify the balances, and transmit the accounts, vouchers, &c., to the 2d Comptroller, "for his decision" thereon. It required the 5th Auditor to receive, settle, and certify to the balances on all accounts relating to Indian Affairs, &c., and transmit them, with the vouchers, &c., to the 1st Comptroller, for his decision thereon. It was made the duty of the Auditors who were charged with the examination of the accounts of the War Department, to receive from the 2d Comptroller the accounts finally adjusted, and to preserve such accounts with the vouchers and certificate. All Warrants drawn on the Treasury, for the use of the War Department, were to be countersigned by the 2d Comptroller and registered by the Auditors, respectively.

The Act of February 24th, 1819 (3d, Stat., 487), supplementary to the Act of March 3d, 1817 (3d, Stat., 366), made it the duty of the 2d Auditor of the Treasury *from* and *after* March 3d, 1819, to receive all unsettled accounts, arising out of Indian Affairs, with the exception of those appertaining to Indian Trade, and examine them, certify the balances, and transmit the accounts, with the vouchers, &c., to the 2d Comptroller for his decision thereon. It also *repealed* so much of the Act of March 3d, 1817, as made it the duty of the 5th Auditor to receive and examine all accounts of Indian Affairs.

The Act of May 6th, 1822 (3d, Stat., 682), to amend an Act, entitled "An Act to regulate trade and intercourse with the Indian Tribes, &c.," required all persons whatsoever, charged or trusted with the disbursement or application of money, goods or effects, *of any kind*, for the benefit of Indians, to settle their Accounts annually at the War Department on the 1st day of September.

The Act of May 7th, 1822 (3d, Stat., 688), "further to amend the several Acts relative to the Treasury, War and Navy Departments," required all Moneys for the use of the War Department, to be drawn from the Treasury by a Warrant, drawn by the Secretary, upon a requisition of the Secretary of War, countersigned by the the 2d Comptroller of the Treasury, and registered by the 2d or 3d Auditor.

This Act repealed so much of Section 4, of the Act of March 3d, 1817 (3d, Stat., 366), as gave to the 5th Auditor and the 1st Comptroller of the Treasury *any* control over accounts, *in any way relating to Indian Affairs.*

The Act of July 9th, 1832 (4th, Stat., 564), to create "the Bureau of Indian Affairs," authorized the President to appoint a Commissioner of Indian Affairs, to whom was given "the direction and management of ALL Indian Affairs, and of ALL matters arising out of Indian Relations." All persons having Accounts and vouchers for claims and disbursements, connected with Indian Affairs, *were required* to transmit them to the Commissioner of Indian Affairs for administrative examination, and it was made his duty to pass the Accounts and vouchers to the proper accounting Officer of the Treasury Department for settlement; which by the Act of May 7th, 1822 (3d, Stat., 688), was the 2d Auditor, who was required to transmit the audited Accounts with the vouchers to the 2d Comptroller for his decision thereon.

The Act of June 30th, 1832 (4th, Stat., 734), to regulate trade and intercourse with the Indian Tribes, &c., *repealed* the Act of February 24th, 1819 (3d, Stat., 487), and it provided that such repeal should NOT be construed *to revive* any part of the Act of March 3d, 1817 (3d, Stat., 366), *which was repealed* by the Act of February 24th, 1819.

The Act of March 3d, 1849 (9th, Stat., 395), "to establish the "Home Department," made it the duty of the Secretary of the Interior to exercise the supervisory and appellate powers then exercised by the Secretary of War, in relation to all of the acts of the Commissioner of Indian Affairs; and to sign all requisitions for moneys out of the Treasury, on estimates or accounts, subject to the same adjustment or control then exercised by the 2d Auditor and 2d Comptroller of the Treasury.

The foregoing were the laws in operation in 1856 and in 1857, when the Defendant in error served as Special Receiver and Superintendent of the sales of Delaware and Wea &c. Indian Trust Lands, at Fort Leavenworth, in *a Military reservation*, and at Paola, K. T., *in an Indian Reserva-*

tion; and are the Acts of Congress which authorized the following Sections of the Revised Statutes:

Commissioner of Indian Affairs.

Section 463. The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian Affairs and all matters arising out of Indian relations.

Section 464. All accounts and vouchers for claims and disbursements connected with Indian Affairs shall be transmitted to the Commissioner for administrative examination, and by him passed to the proper accounting officer of the Department of the Treasury for settlement.

Second Auditor.

Section 277. The Second Auditor shall receive and examine all accounts relative to * Indian affairs * he shall certify the balances, and transmit such accounts, with the vouchers and certificate, to the Second Comptroller, for his decision thereon.

Second Comptroller.

Section 273. It shall be the duty of the Second Comptroller to examine all accounts settled by the Second Auditor, and certify the balances to the office of the department in which the expenditure occurred.

The foregoing Acts of Congress show that the Commissioner of Indian Affairs, the 2d Auditor and 2d Comptroller were the officers authorized and positively *required* by law, to examine and state the Indian Trust Land Accounts of the Defendant in error, as Special Receiver of Indian Trust Moneys.

It will now be shown that the officers authorized by law DID state those accounts; together with certain facts, that the Court may have a correct knowledge of the attempt made to prevent the Defendant in error from getting a legal

settlement of his "accounts and vouchers, for claims and disbursements connected with Indian Affairs," before entering on the argument of the second question of law, raised by the Special Verdict.

The *combined* statement of the Accounts of the Defendant in error, as Special Receiver of Delaware and Wea, &c., Indian Trust Moneys, made by the 2d Auditor and 2d Comptroller, on December 12th, 1876, and February 14th, 1877; a certified copy of which, after long delay, and with much difficulty, was obtained by him, and duly put in evidence, is as follows:

"No. 3040."

"Official Form No. 14."

"Treasury Department."

"Second Auditor's Office, December 12th, 1876."

"I certify that I have examined and adjusted the Account of William Brindle, *late Special Receiver*, under his Bond, bearing date March 19th, 1857, and find that he is indebted to the U. S., the sum of $1,931.50, under the following appropriation:" $1,931.50

"S. M. B."

"57" "Proceeds of lands prior $1,931.50

as appears from the statement and vouchers herewith transmitted for the decision of the 2d Comptroller of the Treasury thereon."

"E. B. ERENCH, Auditor."

"J. C. B."

"To the 2d Comptroller of the Treasury."

"Second Comptroller's Office."

"I admit and Certify the above balance this 14th day of February, 1877."

"C. C. CARPENTER, 2d Comptroller."

No Bond was given by the Defendant in error for the Indian Trust Moneys received by him. See Digest &c. p.p. 149-151.

The following will show why the foregoing Report No. 3,040 was made:

"Treasury Department."

"Second Comptroller's Office, November 28th, 1876."

"Sir: Referring to your indebtedess to the Indian Department of $1,931.50, I have again to call upon you to deposit that sum in some designated depository, or suit will be instituted against you for its recovery. Directions have this day been given for the preparation of the papers, with the view to the commencement of legal proceedings."

"I am sir,"

"Very Respectfully,"

"C. C. CARPENTER, Comp."

"Hon. Wm. Brindle."

"Philadelphia, Pa."

The Accounts of the Defendant in error, as Special Receiver and Superintendent of the sales of Delaware, and Wea. &c., Indian Trust Lands, which the 2d Auditor and 2d Comptroller had adjusted in August, 1861, and which they had before them when Report No. 3,040 was prepared, in December, 1876, and February, 1877, show that the Defendant in error claims a balance to be due to him on the Delaware Indian Account, very largely in excess of the small balance claimed by the 2d Comptroller to be due from the Special Receiver, on the Wea, &c., Indian Account; and as he was NOT indebted to the Indian Department or to any Department, and as he had exhausted every means, outside of the U. S. Courts, of obtaining what is due him by law, he desired that a suit should be brought. The following Sec. of the Revised Statutes made it the duty of the 2d Comptroller to make a stated and certified Report to the Solicitor of the Treasury, before suit could properly be brought.

Who Shall Bring Suits.

Sections 3633. It shall be the duty of the 1st and 2d Comptroller who shall be charged with the revision of the

accounts of such officer, to cause to be stated and certified to the Solicitor of the Treasury.

We will now show why the Certified Report No. 3040, was suppressed, and why suit was brought by the Solicitor of the Treasury on an illegal statement, made by the 1st Comptroller of the Treasury in 1861, who was *not "charged"* by law with the "revision" of the Accounts of the Defendand in error, as Special Receiver and Superintendent of the sales of Delaware, and Wea, &c., Indian Trust Lands.

The Secretary of the Interior in 1857, in gross contempt of positive law, had prohibited the Delaware Indian Trust Land Account of the Defendant in error, for the sale of those lands from being transmitted to the Commissioner of Indian Affairs for "administrative examination," &c., as required by positive law; and had in 1858, ordered that Account to be audited by the General Land Office, and to be sent to the 1st Comptroller, for his decision thereon; as appears from a Report No. 13,920, made by the General Land Office, on March 11th, 1858, to the 1st Comptroller; a copy of which was obtained by the Defendant in error on January 23d, 1878.

This illegal Report No. 13,920, under the head of "statement of Differences" says:—

"Receiver states a balance due him of" .		$5,310.95
"Adjusted balance due him" . . .		2,940.00
"Difference to his debit" . .		$2,370.95

"*Thus Caused.*"

"Amount of Receiver's Commissions overcharged."

"CHARGED"	$4,675.95	
"CREDITED"	2,500.00	
		$2,175.95

"Amount of Receiver's *per diem* for conducting public sale overcharged."

"CHARGED for 127 days" . .	$635.00	
"CREDITED 88 days" . . .	440.00	195.00
"Difference to his debit as above stated"		$2,370.95

No official statement of this illegal adjustment was sent to the Defendant in error by the 1st Comptroller; but in July, 1858, a Treasury Draft for $2,940 was sent to the Special Receiver, informing him that it was for *Commissions* on moneys received at the public sale of the "eastern portion of the Delaware Indian Trust Lands at Fort Leavenworth, K. T., and *for Superintending* said sale."

In December, 1860, a Clerk in the Attorney General's office, accompanied by the Defendant in error, called at the office of the 1st Comptroller, to see the statement of the Account of the Defendant in error, for the expenses of the sale of the eastern portion of the Delaware Indian Trust Lands, in 1856 and 1857. They were informed, that the office did NOT have any such Account or statement; but after suit was brought, in 1877, the Defendant in error obtained permission to examine the Statements of his Accounts of Public Moneys, on the Books of the 1st Comptroller of the Treasury, when he found this Report No. 13,920, mixed up with his Accounts of Public Lands and Moneys; he took the number of it, and applied for a Copy.

It will be observed, that in the Report No. 13,920, NO notice was taken of the fact, that the Defendant in error, as Special Receiver and Superintendent of the sale of the Delaware Indian Trust Lands, had received $467,595.19, and that he had deposited to the credit of those Indians $467.611.41, which was $16.22, more money than the Special Receiver had obtained for them.

The Moneys were deposited before he had made up his Account of those Indian Trust Lands sold, and moneys received, and in this way that error occurred; and this is part of the money legally and justly due him, and for which he is contending.

The Defendant in error also found in the 1st Comptroller's Office a statement of Delaware Indian Trust moneys *received* and *deposited* by the Defendant in error; of which he obtained a Copy. It is headed—"*Indian Trust Lands*" —"General Land Office, March 11th, 1858"—"Report No. 13,919." It charges the Defendant in error with $467,595.19

received, and credits him with $467,611.41 *deposited*, and states a balance *due him* of $16.22. Admitted and certified to by the 1st Comptroller the 23d day of March, 1858.

The Defendant in error closed the sale of the eastern portion of the Delaware Indian Trust Lands at Fort Leavenworth, K. T., on March 23d, 1857, when he transmitted his Accounts, which the Commissioner of Indian Affairs wished to examine and have legally and promptly adjusted, but was ordered by the then Secretary of the Interior, in total disregard of the law, to send the Delaware Indian Account of the Defendant in error to the General Land Office.

Part of Blocks "F" and "G," of Leavenworth City had NOT been properly entered by the Indian Office, in the Tract-Book of the Delaware Indian Trust Lands, and when the error was discovered, the money, amounting to $154, was paid over to the Defendant in error, as Special Receiver, &c., of the Delaware Indian Trust Moneys, and by him duly reported; and which he also found in an Account in the 1st Comptroller's Office, stated thus: "SPECIAL RECEIVER'S ACCOUNT"—"Indian Trust Lands (Delawares)"—"General Land Office, July 20th, 1860"—"Report No. 15,825."

This Account charged the Defendant in error with $154, received for parts of Blocks F and G in Leavenworth City, and credited him with $16.22, "balance *due him* per Report No. 13,919"; and stated a balance due from the Special Receiver on this Report No. 15,825, of $137.78; totally ignoring the difference in dispute of $2,370.95, as stated by Report No. 13,920, of March 11th, 1858.

The Report No. 15,825, of July 20th, 1860, was admitted and certified to by the 1st Comptroller on October 18th, 1860; and yet in December, 1860, when the Attorney General was ordered by the President of the United States to examine the various accounts of the Defendant in error and report to him whether the Special Receiver was indebted to the U. S., as stated by the Int. Department, the Attorney General sent a Clerk to the 1st Comptroller's Office (as

before stated), to know whether the Delaware Indian Accounts of the Defendant in error were in that office; and he was informed that NO such accounts were in the 1st Comptroller's Office. The Attorney General advised the Defendant in error to get his Accounts of the expenses of selling Indian Trust Lands placed in the Indian Office, or those Accounts could NOT be used by him in Court, in case of a suit.

The Hon. Caleb B. Smith, Secretary of the Interior, on May 9th, 1861, ordered the Commissioner of the General Land Office to confine "the action" of his Office "to the compensation of the Land Officers, for services in the ordinary course of their official business"; and to refer "their *claims* for compensation and *expenses* for selling Indian Trust Lands to the Office of Indian Affairs, for settlement in that branch of service." (See certified transcript of the Order, in the appendix to the Digest, &c., pp. 7 & 8; duly put in evidence.)

On May 8th, 1861, the Hon. C. B. Smith, Secretary of the Interior, issued an order to the Commissioner of Indian Affairs (Appendix to the Digest, &c., p. 4), to examine the Accounts and Claims of the Special Officers who had sold Indian Trust lands in K. T., and to have them settled by the proper officers.

Under these orders of May the 8th and 9th, of 1861, the Commissioner of Indian Affairs, on August, the 12th, 1861, examined the Indian Accounts of the Defendant in error, and on that day sent them to the 2d Auditor, as the law required. (Appendix to the Digest, &c., pages 9–11, duly put in evidence.)

The following is a Certified Copy of the examination and adjustment by the 2d Auditor, on August 14th., and the decision of the 2d Comptroller thereon, on August 19th, 1861, of the Account of the Defendant in error, as Superintendent of the sale of the eastern portion of the Delaware Indian Trust Lands, and Special Receiver of the Trust Moneys, which arose therefrom. The Account may be seen on pages 143 and 149 of the Digest, &c. (put in evidence).

DELAWARE INDIAN TRUST LANDS.

"Report No. 1749."—"Treasury Department."

"Second Auditor's Office, 14th August, 1861."

"I Certify, that I have examined and adjusted the Account of Wm. Brindle, late Receiver, &c., and find that he is chargeable:"

"To Appropriation"

"For amount due U. S. being balance per Report of 1st Comptroller, No. 15,825, Oct. 18th, 1860,"		$137.78
"That He Is Entitled To Credit:"		
"For Expenses incurred in the sale of Delaware Lands in March and December, 1856,"	$85.05	
"For Per diem allowed by DECISION of the Secretary of the Interior, and Commissioner of Indian Affairs $195, being the difference between $440 allowed on settlement 1st Comptroller, and $635, charged," . . .	195.00	280.05
"Balance due him,"		$142.27

"Fulfilling TREATY, Delaware Lands."

"A requisition to issue-to Transfer to HIS Credit on account of fulfilling TREATY with Kaskaskias, Piankeshaws, Peorias and Weas-Proceeds of Lands as appears from the statement and vouchers herewith transmitted, for the decision of the Second Comptroller of the Treasury thereon."

"W. Mechlin, 2d Auditor,"

"*Ad interim.*"

"To the 2d Comptroller of the Treasury."

"Second Comptroller's Office."

"I admit and Certify the above balance this 19th day of August, 1861."

"J. Madison Cutts, 2d Comptroller."

From the foregoing it is evident why Report No. 3040 was suppressed, and suit was brought on the illegal Report No. 15,825, made by the Commissioner of the General Land Office, on July 20th, 1860, and which was admitted and certified to by the 1st Comptroller on October 18th, 1860.

Report No. 3,040 was made by Officers lawfully authorized and required to make it; and who stated in August, 1861, a balance of $142.27, due to the Defendant in error; and the illegal Report No. 15,825, of July, 1860, stated a balance of $137.78, to be due by him; and this suit was brought upon that erroneous and illegal statement, made by Officers not required, nor authorized by law, to make it; and it is NOT such an Account as is of any "legal validity in a Court of Justice," as it is NOT an Account of Delaware Indian Trust Moneys *received*, *deposited*, and *expended* under the Delaware Indian Treaty of May 6th, 1854, by the Special Receiver of them; and it does NOT enable the Court to know the credits claimed by him, and the differences in dispute; all of which are shown by the following:

"Treasury Department."

"Second Auditor's Office, 19th August, 1861."

"Sir:—Your Accounts, disbursements, &c., in the sale of Delaware Lands, &c., has been adjusted, and a balance of $142.27-100 found in your favor; *difference*, $2,177.49-100 from your Account, which difference you will find explained by the enclosed statement."

"Very Respectfully, Your Obedient Servant,"

"E. B. French, 2d Auditor."

"Wm. Brindle, Esq.,
Special Receiver, &c."

"Statement differences on settlement Account, Wm. Brindle, Special commissioner, Delaware Lands, to May 6th, 1861."

"Balance due him by his Account," . .		$2,319.76
"Per Settlement,"		142.27
"Difference,"		$2,177.49

"THUS"

"Wm. Brindle charges for expenses and Commissions on sale of Delaware Lands," . .		$5,397.54
"He has been allowed per settlement of First Comptroller, in full for Commissions," . . .	$2,500.00	
"And for amount *per diem*," . .	440.00	
"Allowed by 1st Comptroller,"	$2,940.00	
"He is now allowed BY Decision of Secretary of the Interior *per diem*,"	195.00	
"Expenses Incurred," . . .	85.05	3,220.05
		$2,177.49

"14th August, 1861."

The $142.27, admitted to be due to the Special Receiver on this Account, added to $2,177.49, the amount disallowed, and in dispute, makes $2,319.76, the amount claimed to be due to the Defendant in error, on this Delaware Indian Trust Land Account. (See paragraph 14 of the Special Verdict.)

Especial attention is called to the fact that the 2d Auditor, on August 14th, 1861, commenced his Report No. 1,749, with the sum of $137.78, on which this suit was brought, and, therefore, it has been accounted for; and this Report admits a balance of $142.27, due to the Defendant in error on this account, together with $2,177.49, in dispute, and claimed by the Defendant in error. (Special Verdict, 14th paragraph.)

THE ACCOUNTS of Wea, &c., Indian TRUST Moneys (*Digest, &c.*, pp. 144–148, AND pp. 150–151.)

Paragraph 7, of the Special Verdict, shows that this suit was brought improperly, on an account certified to by the 1st Comptroller on May 8th, 1861, in which it was claimed that there is due from the Defendant in error to the Wea, &c., Indians the sum of $8,170.45. It is a sufficient answer to this erroneous claim, to say that the statement of this amount by the 1st Comptroller and his Certificate, has NO "legal standing in the Court"; but the Defendant in error will dispose of this claim in a different manner, which will doubtless satisfy the Court that he desires fully and fairly to meet and dispose of this erroneous, illegal, and designing Claim.

The Defendant in error, as Special Receiver and Superintendent of the sale of Wea, &c. Indian Trust Lands, was ordered (Digest, &c., pp. 133 and 135), to deposit the Moneys at St. Louis with the Assistant Treasurer of the United States, less the amount retained to pay contingent expenses, upon the requisition of the Special Commissioner of that sale. Upon consultation with him, the Special Receiver retained $11,321.09 to pay the expenses of the sale, upon the requisition of the Special Commissioner, and deposited $335,350.00, the balance of the Moneys.

To correct some errors that had been made in the Indian Office in making up the Tract-Book of the Wea, &c., Indian Trust Lands $120—$1,046.83, and $14.82, additional Wea, &c., Indian Trust Moneys came into the hands of the Special Receiver of those Moneys, making in all $12,502.74; which the Defendant in error fully accounted for, as will be shown.

The Defendant in error discovered, and procured copies of certain illegal statements of Wea, &c., Indian Trust Moneys, *received, and deposited*, which had been made by the Commissioner of the General Land Office, and transmitted to the 1st Comptroller for his decision thereon. Report No. 13,608, of October 7th, 1857, charged the Defendant in error with $346,671.09, received, and credited him with $335,350.00, deposited; stating a balance of $11,321.09, due by the Defendant in error. Report No. 15,265, of Novem-

ber 17th, 1859, added to the $11,321.09, the $120, making a stated balance of $11,441.09. Report No. 15,824, of July 20th, 1860, to the $11,441.09, added $1,046.83, making a stated balance of $12,487.92. Report No. 16,382, of April 8th, 1861, from the $12,487.92, deducted the sum of $4,317.47, being the amount of a TRANSFER "Warrant No. 1, dated 5th, of October, 1860, covering payment, by Treasury Warrant, No. 3,772, in his favor," and then stated a balance of $8,170.45; which is the amount for which suit was brought, on the illegal statement and certificate of the 1st Comptroller, who knew, that NO ACCOUNT of Wea, &c., Indian Trust Moneys, *received*, *deposited*, and *expended*, as rendered by the Defendant in error, had ever been settled, by the Commissioner of the General Land Office, or had been submitted to the 1st Comptroller for his decision thereon; and therefore, he could NOT correctly state, and certify, that any balance was due from the Defendant in error to the Wea, &c., Indian Trust Moneys. The amount claimed by the 1st Comptroller, and for which suit was brought is the sum of $8,170.45, whereas the amount for which the Defendant in error ACCOUNTED, to the Indian Office, was $8,185.27, a difference of $14.82, in favor of the Wea, &c., Indians; which arose in this way: The Hon. Caleb B. Smith, Secretary of the Interior, in May 1861, ordered the Commissioner of the General Land Office to confine his action to the settlement of the Public Land Accounts, of the Defendant in error and to send his Accounts for selling Delaware, and Wea, &c., Indian Trust Lands to the Indian office for settlement; consequently, the $14.82, credited by the Defendant in error to the Wea, &c., Indians, in the Account rendered by him, of the sale of Wea, &c., Indian Trust Lands, which was examined by the Commissioner of Indian Affairs, and adjusted by the 2d Auditor, and decided on by the 2d Comptroller, in August, 1861, did NOT appear in any of the illegal Reports made by the General Land Office, and the 1st Comptroller.

The $4,317.47, credited to the Defendant in error, by a Transfer Warrant, in the illegal Report No. 16,382, was

Moneys due to the Defendant in error on his Disbursing Account of Public Moneys, and which, without his knowledge, or consent, was charged to him on that account and credited to him on the Account of Wea, &c., Indian Moneys, RECEIVED and DEPOSITED, *before* any Account of those Indian Trust Moneys RECEIVED, DEPOSITED, and EXPENDED, by him, under the Wea, &c., Treaty *had been settled;* and none but an account of debit and credit can be legally or properly considered in a Court of Justice. The manifest object of this transaction, by the Interior Department, in the fall of 1860, was to defraud the Defendant in error, out of moneys legally and justly due him.

The Commissioner of the General Land Office, (previous to March 4th, 1861,) had been ordered by the then Secretary of the Interior to settle accounts of Indian Trust Moneys, and in June, 1859, that Commissioner returned to the Defendant in error his Accounts and Vouchers of the expenses of selling Wea, &c., Indian Trust Lands, and ordered him to turn over the Vouchers to the Special Commissioner of that sale, and obtain his receipt for the amount of them, and to forward a new account, and NOT to charge in that account any Commissions on the Wea, &c., Indian Trust Moneys received; which the Defendant in Error was clearly entitled to, and authorized by the Wea, &c., Indian TREATY (10 Stat., 1084,) to charge, with the other expenses of sale, in his account, as Special Supt. of the sale and Special Receiver of those Moneys. The Special Commissioner said, that it was NOT his duty to pay the expenses of the sale, that they had been paid on his requisition, and unless the Commissioner of Indian Affairs ordered him to receipt for the Vouchers and settle the account he would NOT do so; and more particularly as the Commissioner of the General Land Office had NO legal right to give him any orders in relation to the sale of those Indian Trust Lands.

As the Defendant in error was NOT willing to render a new account and relinquish his right to charge Commissions on the Wea, &c., Indian Trust Moneys, he did NOT comply with the illegal and unjust order of June 1859. In

November, 1859, by permission, the Defendant in error visited Washington City to try and get a legal settlement of his Accounts. He called on the Secretary of the Interior and made a written application to have certain questions of law, relative to the settlement of his Accounts of Indian Trust Moneys, referred to the Attorney General; to which no reply was made until in January, 1860, when the Secty. refused to refer any question to the Atty. General. In the summer of 1860, the Secty. of the Interior, without having allowed the Defendant in error to obtain a settlement of his Account of the sale of the Wea, &c., Indian Trust Lands, caused the illegal Report No. 15, 824, of Moneys RECEIVED and DEPOSITED to be made by the Commissioner of the General Land Office; which stated a balance of $12,487.92 to be due from the Defendant in error to the Wea, &c., Indians, LESS $4,317.47, credited to him by TRANSFER Warrant No. 1, &c., leaving a balance stated of $8,170.45, in order to trump up a balance against him, and again demand his removal, as had been done by the Secty. of the Interior in 1858. In the fall of 1857, the Defendant in error had opposed the assumption of the Lecompton Constitutional Convention, and had ferreted out and exposed the election frauds for members of the Territorial Legislature, in K. T. What he did, the President of the U. S., had authorized the Gov. of K. T., to promise the citizens of Kansas should be done.

In the fall of 1860, the then Secretary of the Interior, after having prevented the Defendant in error from obtaining a legal settlement of his various Accounts, charged him with being in default to the U. S., and a second time demanded his removal. He was notified of the charge, by one of the President's Secretaries: the falsity and gross injustice of which the Defendant in error exposed in a printed statement and explanation of his various Accounts, and transmitted it to the President of the U. S., who again refused to comply with the request of the Secty. of the Interior; and granted the request of the Defendant in error for permission to go to Washington City to get a legal set-

tlement of his various Accounts. On the 17th of January, 1861, Attorney General Stanton, by the request of the Secty. of the Treasury, delivered a written and Certified opinion as to the legal mode of adjusting the various Accounts of the Defendant in error; which was put in evidence. So much of that opinion, as relates to his Indian Trust Money Accounts, may be seen on pages 138-141, of the Digest, &c. The Atty. General was of the opinion that the Indian TREATIES allowed Commissions on the Moneys received; that they did NOT limit the Commissions to a part of the Moneys received; and that 1 per cent. Commissions on those Moneys was a just compensation. The Secty. of the Interior, in January, 1861, refused to respect, or permit this opinion to be carried out, in the settlement of the Accounts of the Defendant in error; hence the necessity for this suit.

Under the order of the Secretary of the Interior, in office on May 8th, 1861, (Appendix to the Digest, &c., p. 4.) the Commissioner of Indian Affairs, (Appendix to the Digest, &c., p. 11,) on August 12th, 1861, examined the Account of the Defendant in error for the sale of the Wea, &c., Indian Trust Lands, (See the Accounts on pages 144–148, and 150 & 151 of the Digest, &c.,) and on that day sent them to the 2d Auditor for examination and adjustment. His Report is as follows:

Kaskaskia & Peoria, Piankeshaw & Wea, Indian Trust Lands.

"Report No. 1750."—"Treasury Department."

"Second Auditor's Office 14 August, 1861."

"I Certify, that I have examined and adjusted the Account of Wm. Brindle, SPECIAL Receiver, &c., and find that he is chargeable:"

"*To Appropriation.*"

"For amount due U. S., being balance Report No. 16,382, of 1st Comptroller of May 8th, 1861". $8,170.45

"And"

"For amount acknowledged to have received, 26th April, 1861, for 9.41 acres, sold in 1857".		14•82
"Making to his debit" . . .		$8,185•27
"That He Is Entitled To Credit."		
"For Expenses incurred in sale of Land in 1857 & 1858, together with mileage and *per diem*"	$3,611 50	
"For This sum ALLOWED by Secretary of the Interior in full for all Commissions" . .	2,500 00	6,111•50
"Balance due the U. S."		$2,073•77

"Kaskaskias, Piankeshaw, Peorias, & Weas."

"PROCEEDS OF LANDS."

"As appears from the statement and vouchers herewith transmitted for the decision of the 2d Comptroller of the Treasury thereon."

"W. MECHLIN,
Second Auditor, *ad interim*."

"To the 2d Comptroller of the Treasury."

"Second Comptroller's Office."

"I admit and certify the above balance this 19th day of August, 1861."

"J. MADISON CUTTS, Second Comptroller."

The following is a copy of the official notice to the Defendant in error of the examination and adjustment of his account of Wea, &c., Indian Trust Moneys, which shows the difference between the amount of commissions due to the Defendant in error, and the amount allowed him:

"*Treasury Department.*"

"Second Auditor's Office, 19th August, 1861."

"SIR:—Your Account, per disbursements, &c., in the sale of lands of Kaskaskias, Wea, &c., have been adjusted, and a balance of $2,073.77-100 found due the U. S., differing from your Account $1,150.40-100, which you will find *explained* by the ENCLOSED Statement."

"You will please pay over to any Depositary of the U. S. the sum of $1,931.50-100, being the balance due the U. S. on Account of Wea Lands, after deducting $142.27-100 *due you*, on Account of Delawares, and send to *this Office* the evidence of payment, in order that your Account may be closed."

"Very Respectfully Your Obdt. Servant,"

"E. B. FRENCH, Second Auditor."

"WM. BRINDLE, ESQ.,"

"Receiver, &c., &c."

"Statement, DIEFERENCES on settlement, Account Wm. Brindle, SPECIAL Receiver, Kaskaskia, Wea, &c., Lands to 6th May, 1861."

"Balance due the U. S. per settlement," . .	$2,073.77
"Balance due the U. S. by his Account," .	923.37
"DIFFERENCE," . . .	$1,150.40

"THUS"

"V. 25.—R. S. Stevens.—Wm. Brindle charges $171.87-100, paid Mr. Stevens for services, &c., &c. Mr. Stevens has been paid in full for services, &c., on settlement of his Account,"	$171.87
"Mr. Brindle charges $3,478.53-100 for Commissions on sales of lands. He is allowed $2,500 in full; the residue, $978.53-100, disallowed,"	978.53
	$1,150.40

"14th August, 1861."

Revised Statutes—Certified Balances.

Section 191. The balances which may be stated by the Auditor and certified to the Heads of Departments by the Commissioner of Customs, or the Comptrollers of the Treasury, upon the settlement of Public Accounts shall not be subject to be changed or modified by the Heads of Departments, but shall be conclusive upon the Executive Branch of the Government, and be subject to revision only by Congress or the proper Court. x x.

The foregoing Report, No. 1750, shows, that the amount accounted for by the Defendant in error, on the settlement of his Account of the sale of the Wea, &c., Indian Trust Lands, was $8,185.27. Report No. 3040, made by the 2d Auditor and 2d Comptroller in 1877, of the combined Accounts of the Defendant in error, for the sale of the Delaware, and Wea, &c., Indian Trust Lands, shows, that the 1st Comptroller knew in 1877, when he Certified, that the Defendant in error was then indebted to the Wea, &c., Indians in the sum of $8,170.45; that on the settlement by the proper Officers of the Account of the expenses of the sale of those lands, that he had ACCOUNTED to those Indians for the sum of $8,185.27, which was $14.82, more Money, in favor of those Indians, than the 1st Comptroller had CREDITED them with.

No Court of law or justice can receive or take any notice of any account that is NOT a statement of debit and credit, which puts the sum or sums in dispute, correctly and Clearly before it; nor can the U. S. Courts receive as valid the Certificate of an Officer NOT authorized, by law, to make it; and especially an Officer who had never had in his Office any Account of the expenses of the sale of the Wea, &c., Indian Trust Lands, and therefore, could NOT correctly state to the Court anything in relation to it.

It is manifestly a wise provision of law, which prohibits the U. S. Courts from receiving any statement of an account from an Officer NOT authorized by law, to make it; and especially from one who attempted to prevent the U. S. Courts from arriving at an exact knowledge of the Accounts and of the questions in dispute.

Paragraphs, 14, 15, & 16, of the Special Verdict show, the expenses charged by the Defendant in error, for selling the Delaware and Wea, &c., Indian Trust Lands, and the differences in dispute; and having shown, that the 2d Auditor and 2d Comptroller were the Officers authorized and required by law, to state the Delaware, and Wea, &c., Indian Trust Money Accounts of the Defendant in error; and that they did state them in 1861, and duly Certified those Accounts to the U. S. Courts; the second question of law raised by the Special Verdict will now be stated:

Second—The second question raised by the Special Verdict for the opinion of the Court, is whether the Defendant in error, as Special Receiver of Indian Trust Moneys, is entitled to commissions on sales of Indian Trust Lands, and to the expenses incident to the sales of such lands, paid by him?

The jury, in paragraph 16 of the Special Verdict, said: "That while the Defendant was acting as Special Receiver of Indian Trust Moneys, he paid out for the expenses of the sale of the Wea, &c., Indian Trust Lands, the sum of $3,611.50, and for the expenses of the sale of the Delaware Indian Trust Lands the sum of $280.05, for which NO credit was given by the 1st Comptroller of the Treasury, which sums were *necessarily expended* by the Defendant, as such Special Receiver, and are *reasonable* for the purposes for which the payments were made." These sums were ALLOWED by the 2d Auditor and by the 2d Comptroller, in Reports No. 1749 and 1750, as has been shown, and which were duly put in evidence.

The jury, in paragraph 17 of the Special Verdict, said: "That for the labor and risk of making sales of Indian Trust Lands, ONE per cent. Commissions on the AMOUNT of such sales is a fair compensation."

The only authority for selling the Delaware, and Wea, &c., Indian Trust Lands, was the Delaware Indian TREATY of May the 6th, 1854 (10 Stat., 1048), and the Wea, &c., Indian TREATY of May the 30th, 1854, (10 Stat., 1082). As these Treaties authorized the payment

made in the interest of the Indian TRIBES, parties thereto. All of these Indian Trust Lands were sold at the PUBLIC sales.

Act No. 112, of January 9th, 1837 (5 Stat., 135), to authorize moneys derived from the sale of Indian Lands ceded to the U. S. in TRUST, to be deposited in the Treasury of the U. S., AFTER DEDUCTING the EXPENSES of surveying, managing, and selling such lands, was the only authority for having deposited those moneys, and the Treasurer's authority for having received them. This Act required Special Accounts of the funds under said Treaties to be kept at the Treasury, separate and distinct from all accounts of funds derived from the sales of Public Lands.

Those Indian Trust Lands were to be sold at PUBLIC AUCTION, without limit as to quantity; the sales were to be CONDUCTED in conformity to the laws for conducting sales of public lands, so far as applicable. Act No. 62, of April 24th, 1820 (3 Stat., 566), limited a sale of public lands to two weeks. Of course this restriction could not, and did not, limit the time occupied in selling those Indian Trust Lands, as the stipulations in those TREATIES provided that the time should NOT be so limited. They explicitly provided that the EXPENSES of managing and selling those Indian Trust Lands should be paid OUT of the MONEYS arising from the sales of those lands BEEORE any of those Moneys could be properly paid over to the Indian TRIBES, parties thereto. Those Treaties did NOT limit the expenses; they did NOT fix the rate of Commissions on the purchase Moneys derived from the sales of those lands. The necessary and actual expenses were to be paid, and the Jury said that the expenses paid by the Defendant in error were "necessarily expended" and "reasonable for the purposes for which the payments were made," and that the "one per cent. Commissions" charged by him "on the amount of such sales is a FAIR compensation," which show indisputably that the Defendant in error is legally entitled to 1 per cent. Commissions on all of the Moneys received by him from the sales of those Indian

Trust Lands, and to the expenses incident to the sales paid by him.

The Indian Treaties provided that the sales of the Delaware and Wea, &c, Indian Trust Lands should be *conducted* in the same manner as the sales of Public Lands, which made it indispensably necessary to appoint a Special Receiver and Supt. of those sales, as the Office of Receiver was created by Congress by Act No. 1, of May 18th, 1796 (1 Stat., 464), for the first public sale of U. S. lands, and the Office has been continued to this time, and NO SALES of those Indian Trust Lands could have been made, under those TREATIES, without the appointment of a Special Receiver and Supt. of them.

The sales of those Indian Trust Lands appertained entirely "to Indian Affairs," which the law required to be under the control of the Commissioner of Indian Affairs, and they were sold under his orders and control, as will be shown.

THE SALE OF THE DELAWARE INDIAN TRUST LANDS.

At the sale of the eastern portion of the Delaware Indian Trust Lands, at Fort Leavenworth, K. T., in 1856 and 1857, the Commissioner of Indian Affairs was represented by a SPECIAL Commissioner and General Supt. of the sale. The Orders of the Commissioner of Indian Affairs to the Special Commissioner will be found on page 130 of the Digest, &c., duly put in evidence.

On the 13th of September, 1856, the President of the U. S. had Commissioned the Defendant, in error, Receiver of Public Moneys, "for lands subject to sale at Locompton, K. T." in the Pawnee Land District, where he then resided. The District Land Office had NOT THEN been OPENED, and was NOT opened until in April, 1857, and of course, the Defendant in error had NOT entered on the duties of the Office, on October 24th, 1856, at which time the Secretary of the Interior informed the Commissioner of the General Land Office, that the Defendant in error had been

appointed to the service of assisting the Special Commissioner at the sale of the "Delaware lands," to be sold at Fort Leavenworth, K. T. (See that communication on p. 128 of the Digest, &c.)

The Commissioner of the General Land Office was ordered to confer with the Commissoner of Indian Affairs and send his Orders to the Defendant in error; which was done on the 29th of October, 1856, as may be seen on page 129 of the Digest &c., duly put in evidence.

By those Orders, the Defendant in error, was informed that the Indian Agent for the Delawares would be in attendance, "on the part of the Indians," and "under the instructions of the Indian Office," to receive from the Defendant in error, as Special Receiver, all of the Moneys arising from the sales of those lands.

The Special Receiver was further instructed, that the records, &c., respecting these lands, were to be considered "special and entirely distinct from all records and papers relating to public lands."

By the Proclamation of the President of the U. S., this sale was to commence on November 17th, 1856, at Fort Levenworth, K. T., within the limits of a Military Reservation; and it did commence on that day. But when the Special Commissioner arrived at Leavenworth City, he was made to believe that it was useless to open the sale, as it could NOT be carried on to completion. On the evening of the 16th of November, 1856, he called at the quarters of the Defendant in error, and so expressed his fears, when he was assured that the sale could be carried on to completion. It was promptly opened and successfully completed to the entire satisfaction of the "HEAD MEN" of the Delaware Tribe, who were present during the sale. Only one serious effort was made to interfere with the sale. A few days after it opened a frontiersman stood in the presence of the Crier, and when a certain tract was announced for sale to the highest bidder, the man ordered the Crier to stop, as he had laid a "Mail-Float" on that tract, and that he would shoot the man who first bid on it. This was the first opportunity

to satisfy the bidders, that the Special Officers were able and determined to control the sale, and carry it on to completion. The Defendant in error informed the man that a "U. S. Float" could not be located on any of the Delaware Indian Trust Lands, secured to them by Treaty, and ceded by them in Trust to the U. S., to be sold for the sole benefit of those Indians, to facilitate the settlement of the Territory. The man replied that the Tract belonged to him, and reiterated his threat.

The Defendant in error then announced to the bidders that any one present had a right to bid on the tract, and that the highest bidder should have the land; and then stepped outside with the claimant and ordered the Crier to again put up the tract, at its appraised value, as the bid of the Special Receiver, who would make but one bid. It was a very desirable tract of land; the bidding was lively; it sold for over $7 an acre; and the right of the Special Officers to order and control the sale was firmly established.

By referring to page 12, of the Appendix to the Digest, &c., it will be seen that on the 27th day of October, 1856, the Commissioner of Indian Affairs ORDERED Dr. B. F. Robinson, Agent of the Delaware Indians, to attend the sale of the Delaware lands, and receive from the Defendant in error the Moneys arising from the sales, and to convey them to St. Louis, and deposit them with the Assistant Treasurer of the U. S. at that place. Dr. Robinson was authorized to employ guards, and for all liabilities incurred he was ordered to render an account with the vouchers.

On page 11, of the Appendix to the Digest, &c., will be seen the administrative examination of the Account of Dr. Robinson, by the Commissioner of Indian Affairs, who was denominated a "SPECIAL" Agent, &c., and very properly so, because he rendered a Special service, and was paid accordingly.

Dr. Robinson, the "Special Agent, &c.," did NOT arrive at Fort Leavenworth until some days after the sale began, and would NOT receive from the Defendant in error and receipt for any Moneys until November 21st, when he

received and receipted for $48,140.83; and for nearly a week the Special Receiver, at the close of each day's sale, late in the evening, had to carry the money to his quarters at Leavenworth City, a distance of three miles, and leave it in the care of his Wife, during the day, without any guard; for which duty this Indian Agent was compensated as a "Special Agent."

The Defendant in error, as Special Receiver and Supt., sold for the Delaware Indians 210,745.18 Acres of Land, for which he obtained $467,749.19, which is $204,317.71 more Money than he obtained for the same number of acres of U. S. lands, equally good; consequently the Delaware Indians were delighted with the determined and successful manner in which the sale had been conducted.

The Special Commissioner advised the Defendant in error to retain the 1 per cent. Commissions due to him on the Moneys received by him; and also the amount necessary to pay the moneys expended by him for the sale, which he declined to do, as he had not received any express order to do so, and as he then supposed that his Account would be promptly adjusted; but in this he was mistaken. The sale closed on March 23d, 1857, when he rendered his Account, and NOT until in July, 1858, did he receive a Draft for a part of the Commissions, &c., due to him by the express terms of the TREATY out of the Moneys which he had, by a firm and determined course, been mainly instrumental in procuring for those Indians, and now, after long delay, vexation and great expense, he has been forced into the U. S. Courts to get the balance of the moneys clearly due to him under the Delaware Indian Treaty of May 6th, 1854, a part of which money claimed is due to him for having deposited MORE Money to the credit of those Indians than he received for them.

On the 23d of February, 1857, before the sale of the Delaware Indian Lands had been completed, the President by and with the advice and consent of the Senate, re-appointed the Defendant in error Receiver of Public Moneys "for lands subject to sale at Lecompton, K. T.," in the

Pawnee Land District, and also Disbursing Agent. No District Land Office had been opened in Kansas Territory, and in April. 1857, the Defendant in error went to Lecompton, K. T., for that purpose; and a few days after he opened the Land Office for the Pawnee Land District, he was informed that the Commissioner of Indian Affairs desired him to assist in selling the Wea, &c., Indian Trust Lands, at Paola, K. T., in an Indian Reservation, about sixty miles south of Lecompton.

THE SALE OF THE WEA, &c., INDIAN TRUST LANDS.

On pp. 132–134, of the Digest, &c., may be seen a communication from the Commissioner of the General Land Office, informing the Defendant in error that he had again been appointed at the request of the Commissioner of Indian Affairs to assist the SPECIAL Commissioner in selling the Wea, &c., Indian Trust Lands in the Wea, &c., Indian Reservation, and also transmitting the instructions of the Commissioner of Indian Affairs in relation to that sale.

The instructions of the Commissioner of Indian Affairs on May 15th, 1857, to the Special Commissioner of the sale of Wea, &c., Indian Trust Lands may be found on pp. 134–136 of the Digest, &c. It will be seen that he was instructed that enough Wea, &c., Indian Trust Moneys should be retained to pay the expenses of the sale upon his requisition, and that duplicate receipts should issue for all moneys paid for the lands sold, and that Patents would be issued for the Indian Trust Lands, "as in the case of sales of the United States Lands," and further, that as NO Guard had been provided from the military forces of the U. S., the utmost watchfulness would be required for the safe-keeping of the Moneys, Books, &c., and that the sales would be CONDUCTED by the Defendant in error and his colleague.

The Defendant in error was instructed (Digest, &c., p. 134) that the records, &c., respecting the Wea, &c., Indian Trust Lands, were to be considered "SPECIAL and entirely

DISTINCT from all records and papers relative to Public Lands."

The Defendant in error having been relieved of his duties as Receiver of Public Moneys, at Lecompton, K. T., closed his Office at that place soon as possible, and repaired to the Wea, &c., Indian reservation, preparatory to the sale of the Wea, &c., Indian Trust Lands. An unfinished and very insecure frame building was secured for the purpose of an Office; a small but reliable number of persons were secured by the Defendant in error as a Guard of the Moneys and records of the sales; and when about $200,000 in gold had been received, one of a gang of midnight thieves effected an entrance into the room containing the Moneys, when one of the guard fired on the thief, who tumbled out of the window through which he had entered by removing part of the sash, and was carried off by his companions, who escaped, as the small guard had orders NOT to leave the building in case of an attack. An effort was made by one of a party of speculators to stop and control the sale, which was promptly and summarily suppressed. The Defendant in error sold for the "United Tribe" of Wea, &c., Indians 208,656.30 Acres of lands, for which he received $347,852.74, which was $87,045.60 more money than he received for the same quantity of U. S. lands equally good, and which amount might have been very easily and materially decreased by less care, determination, and fidelity to the interests of the Indians in conducting the sale.

When the lands were all sold, the Defendant in error packed up the records of the sale, and boxed up the Moneys,—principally in gold,—and prepared to leave the Indian country, and deposit the books and papers of the sale at Lecompton, and to deposit the Moneys at St. Louis, Mo., as directed.

On the morning that the Special Receiver left Paola, Baptiste Peoria, the Chief of the United Tribe of WEA, &c., Indians informed the Defendant in error that a party of 18 frontier robbers intended to attack him that night to get the Money. When about midway between Paoli and the

McCammish Ranch, near the crossing of the Santa Fe road, and about the middle of the day, a young man came out of a strip of woods alongside of the wagon trail, and asked the Special Receiver to give him a private audience, which he gave him. The man asked the Special Receiver whether he recognized him? He said he did not; when the stranger said that he belonged to a band of 18 men who expected the Special Receiver to be at or near the McCammish Ranch that night, and that they purposed making an effort to get the Indian moneys, and as the Special Receiver had been the means of saving his life on one occasion, he had felt it to be his duty to warn him of the approaching danger: and then as suddenly disappeared among the timber as he had appeared. The McCammish Ranch was reached about sunset. Supper was procured by the Special Receiver for his men; the horses were fed and preparations made after dark to reach the high dividing ridge which lies between the Santa Fe road and the Wakarusa River, as the best means of finding a place to *bivouac* until the moon rose, and to elude the search of the band, or to make a defense if discovered and attacked. About dusk a number of well-armed horsemen arrived at the Ranch; the Special Receiver made public inquiries as to the road to Westport, Mo., and Kansas City, leaving the impression that he intended going to those points and after dark he resumed his journey, and when he reached the Santa Fe road, he turned west instead of east, and then struck north on to the high dividing ridge, and there *bivouaced;* corralling his horses, intending to remain until the moon rose; which would be about 1 o'clock in the morning. Soon after having made his preparations to resist an attack, he heard the tramping of the horses of the party in search of him; the night being dark and not having any conveyance covered with light colored material, his position was not discovered; and when the moon rose he resumed his journey—traveling north—and struck the settlements, at the crossing of the Wakarusa River soon after the dawn of day. After crossing the Wakarusa River, the journey to Lecompton and the Missouri River was comparatively safe, as it was pursued in the day time.

The wild and disturbed condition of Kansas Territory in 1857—twenty-five years ago—is so well known, that any one can form some idea of the risk and responsibility incurred by the Special Receiver in receiving, safe-keeping, transporting and depositing, those Wea, &c., Indian Trust Moneys.

Attorney General Stanton, in his opinion of January 17th, 1861, (Digest &c., pp. 138–141), said: x x "It is therefore clear, that the duty assigned to Mr. Brindle of attending the sales of these Indian Lands, and of receiving, keeping, and transmitting the Moneys paid for them, was NOT one imposed upon him by virtue of his Office, as Receiver in the Pawnee Land District, but was one which arose from his SPECIAL appointment by the Department of the Interior." x x.

"The amount of Compensation may be ascertained by reference to the compensation allowed for like services, made in laws, in relation to the sale of public lands. Those laws give 1 per cent. Commissions on the moneys received. The restriction in the Act of 1818, on the amount of Commissions to be allowed, by virtue of that Act, as already said, does NOT apply to Fees or Commissions otherwise provided for; and is therefore inoperative here. It is accordingly my opinion that the Receiver, authorized to assist the Commissioner in conducting the sales of these Indian lands, might justly be allowed 1 per cent. Commissions on the Trust funds received by him, under his Special appointment."

A. B. Greenwood, Commissioner of Indian Affairs, who succeeded Gen. Denver, in a communication of January 28th, 1861, to the Acting Secretary of the Interior, (Appendix to the Digest, &c., pp. 1–4,) in relation to allowing compensation for selling Indian Trust Lands, said: x x "Commissioner Denver was of the opinion that Land Officers, acting as SPECIAL Registers and Receivers, under SPECIFIC instructions to ASSIST Superintendents or Commissioners of sales of Indian Trust Lands, were entitled to receive a FAIR remuneration, for such EXTRA services, WITHOUT REGARD to the Salary and Commissions re-

ceived by virtue of their Offices as Register and Receiver in connection with the sales of the Public Lands." x x.

"In reference to this class of claims, I will state that the impartial judgment of the Office of Indian Affairs has ever been that they are JUST and SHOULD be paid."

"With reference to the charges for incidental expenses, paid by Special Receivers, I would remark, that their allowance is a question which addresses itself to the JUSTICE of the Department. These Special Receivers were Disbursing Officers, and would appear to be entitled to be re-imbursed, the sums paid by them, for expenses incident to the sales of the Trust Lands. It is clear, that the Commissioner of sales, of those lands, would have been authorized to claim for the payment of such expenses, had the amount thereof been disbursed by them, and that the Special Receivers are as legitimately entitled, seems equally clear. It would therefore appear, that the parties claimant are entitled to an examination and settlement of their respective Accounts, upon the principles recognized by the Attorney General, in his opinions hereinbefore referred to. x x This report is applicable to the case of William Brindle, late Special Receiver." x x.

"In conclusion I would remark, that had the Special Receivers x x made default in paying over the funds received by them, under their Special appointments, NO SUIT upon the OFFICIAL Bonds of those officers, could, in my opinion, have been successfully maintained, for such default. x x The authority for compensating those Agents, was found in the TREATISE, and NOT elsewhere."

The Hon. Caleb B. Smith, Secretary of the Interior, on May 8th, 1861, ordered the Commissioner of Indian Affairs to settle the Accounts for selling Indian Trust Lands, (Appendix to the Digest, &c., p. 4,) in which he said:

"The Indian Lands for the sales of which this claim is presented, DID NOT BELONG to the U. S. It is true, that by the terms of the TREATY, the legal title was vested in the U. S., but the equitable interest still remained in the Indians. x x It was expressly agreed, that the cost of sur-

veying, managing, and selling the lands, should be deducted from the proceeds, and the residue ONLY should be paid to the Indians."

"In executing this provision of the TREATY, the President was authorized to select such Agents, as he might deem expedient, and to pay them a reasonable compensation out of the FUND. It was NOT necessary that he should select the Land Officers to make the sale. It could have been as well made by any other persons as by them. The Land Officers were under NO LEGAL obligation to perform the duty. It was NO PART of the DUTY assigned to them BY LAW. The SURETIES upon their OFFICIAL BONDS could NOT have been held responsible for an improper discharge of this duty, NOR for a misapplication of the FUND arising from the sale. The service was performed NOT FOR the U. S., but for the Indians. The U. S. was but a NAKED TRUSTEE, and AN AGENT of the Indians, in selecting the persons, TO MAKE the SALE. Had the President selected any persons who were NOT then Officers of the U. S., NO ONE would have questioned the right of such persons to receive compensation from the Indian FUND. Does, then, the fact that the persons selected were U. S. Officers, deprive them of that right? I think it does NOT."

"It has been decided by the Supreme Court of the U. S., that an officer is entitled to compensation, in addition to that provided by law, for the regular duties of his Office, when he performs services for the Government outside of those which belong to his Office, and for which compensation IS PROVIDED by law. (Converse vs. U. S., 21 Howard, 463)."

"x. x. The compensation of the agents making the sale was a necessary part of the expense, and the fact that they were Officers of the U. S. presents NO reason why they should not be paid."

"No specific compensation having been provided in the treaty, they are entitled to a reasonable one. The rate of compensation adopted by the Government for similar

services furnishes a fair rule to determine the amount which should be paid. I think the claimants should be allowed one cent. Commissions upon the sales of the lands of each Tribe, the maximum in any one year not to exceed $2,500, being the amount allowed by the U. S. Their Accounts will be adjusted accordingly, and the amount found to be due will be paid out of the respective Indian Funds, in proportion to the amount of sales of each."

The Secretary of the Interior was correct in saying that the specific rate or amount of Commissions was not fixed nor limited by the treaties; and as the jury have said that "1 per cent. Commissions on the amount" of purchase moneys received at each sale, "is a FAIR compensation," this settles the second question raised by the Special Verdict, in support of the claim of the Defendant in error to 1 per cent. Commissions on all the Delaware and Wea, &c., Indian Trust Moneys received by him.

The Indian Tribes, in making those Treaties, could have limited the expenses to 1 per cent. Commissions on a part of the purchase money; but they did NOT do so, for the obvious reason that by not limiting the Commissions to 1 per cent. on a part of the moneys received, they made it the interest of the Defendant in error, as the Special Receiver and Supt. of the sales, who conducted them, and is allowed by the Treaties Commissions on the moneys, to get the highest price for the lands that could be obtained. The Treaties do NOT limit the Commissions to a part of the moneys; because the Indians knew the advantage to them of allowing a Commssion on each and every dollar received, as a principle of right and justice, and promotive of their interests; and they are always willlng to carry out their Treaty stipulations.

The sale of the Delaware Indian Trust Lands was made at Fort Leavenworth, K. T., in a single room of one of the barracks, in the midst of hostile and contending factions, in the fall and winter of 1856 and 1857, without any of the conveniences of a regular and permanent Office. It was a temporary service, and all the work had to be done in great

haste and in the midst of great confusion. The labor, responsibility, and risk were enormous, performed not simply with integrity, but with great determination, which greatly promoted the pecuniary interests of the Delaware Indians, as has been shown by a reference to the number of Acres of land sold and the amount of Moneys received.

The sale of the Wea, &c., Indian Trust Lands, as has been stated, was made in an unfinished and very insecure building, with none of the conveniences of a regular and permanent Office, and also in the midst of exceedingly hostile factions, and all of the work had to be done in a great hurry and in the midst of confusion, and the number of Acres of land sold and the amount of Moneys realized for the "United Tribe" of Wea, &c., Indians fully attest the fidelity with which the Defendant in error, as Special Receiver and Supt. of the sale, discharged the trust reposed in him; and the U. S., as the TRUSTEE, responsible to the Wea, &c, Indians, after having been saved by the Defendant in error, at the risk of his life, from the loss of nearly $350,000, instead of allowing the Defendant in error to be compensated out of the Wea., &c., Indian Fund, has forced him, after long delay, and after having subjected him to great annoyance and expense, into the U. S. Courts, where, without reason, law or justice, this Trustee is attempting to deprive the Defendant in error of that compensation legally and justly due to him from the Delaware and Wea, &c., Indian TRIBES, under the TREATIES of 1854.

On June 6th, 1862, the Secty. of the Interior directed the Commissioner of Indian Affairs to examine the Account of Ely Moore, deceased, who was special Register and Supt. of the sale of Wea, &c., Indian Trust Lands, and to allow him $2,500 Commissions on the Moneys received at that sale, which amount was paid as ordered. (See the Appendix to the Digest, &c., pp. 7 & 9.)

The remarkable facts are, that the Secty. of the Interior, who was in Office previous to March 4th, 1861, had prevented the Commissioner of Indian Affairs from settling any Accounts for the sale of the Wea, &c., Indian Trust

Lands, and from allowing any Commissions on the purchase moneys derived from the sale of those Trust Lands, had allowed Commissions, &c., for selling the Delaware Indian Trust Lands, and had ordered the Commissioner of Indian Affairs in 1859 to SETTLE an Account of the AGENT of the Delaware Indians, AS "SPECIAL Agent," &c., for having received from the Defendant in error the moneys received by him from the sale of the Delaware Indian Trust Lands, and for having deposited those moneys in the Depository at St. Louis, Mo.; and he was so paid (Appendix to the Digest, &c., p. 11), and very properly so, as the services rendered by him at the sale of the Delaware Indian Trust Lands were NOT any part of his regular duties of Delaware Indian Agent.

The Accounts for the sale of the Wea, &c., Indian Trust Lands NOT having been settled, previous to March 4th, 1861, enabled the Hon. Caleb B. Smith, to issue his ORDERS of May 8th, 1861, to the Commissioner of Indian Affairs, and of May 9th, 1861, to the Commissioner of the General Land Office (Appendix to the Digest, &c., pp. 487), ordering the one to settle the Accounts for selling Indian Trust Lands, and the other to settle the Accounts for the sale of Public Lands.

The following facts will show that the limiting proviso of the Commission Act of April 20th, 1818, (Digest, &c., No. 58, 3, Stat., 466), cannot be applied to limit Commissions, or compensation of any kind NOT received under its provisions; and especially NOT to limit, compensation, expressly provided for by the Indian Treaties of 1854.

By the Acts No. 2, of May 10th, 1800 (2, Stat., 73), and No. 5, of March 26th, 1804 (2, Stat., 277), a Receiver of Public Moneys, for receiving, safe-keeping, and depositing public moneys, was allowed a Salary of $500 per year, and a Commission of 1 & 1-2 per cent. on all moneys paid to him for lands sold without any limit whatever. This rate of Commissions continued until the money panic and crash of 1818; when the Receiver's Commissions, on moneys paid for U. S. Lands sold, were by Act No. 58 (3, Stat., 466), changed and

reduced to 1 per cent. and limited to a maximum of $2,500 per year; but it must be borne in mind, that $2,500 in 1818, had a purchasing power fully equal to $10,000 in 1857, 1861, or at this time; and also, that Congress, previous to, and after 1818, allowed Receivers of Public Moneys certain FEES for their own use, received from third persons, and also additional compensation OUT of the Treasury of the U. S. for extra services in addition to the regular Salary of $500 per year, and 1 per cent. Commissions on purchase moneys out of the Treasury of the U. S.; and on May 22d, 1826, Congress by Act No. 91 (4, Stat., 193), so amended the Act No. 58 of 1818 (3, Stat., 466), as to allow compensation for depositing Public Moneys, in addition to the Salary and Commissions allowed by the Act of 1818.

Congress, on May 22d, 1826, by Act No. 92 (4 Stat., 193), gave to Receivers of Public Moneys certain FEES, for their own use, and CLERK-hire, at PRIVATE sales of lands, and Commissions on moneys paid for lands sold, in addition to the Commissions allowed by Act No. 58, of 1818. As Congress did not think that the limiting proviso of the Commission Act, No. 58, of 1818, applied to the additional Commissions given by Act No. 92, of 1826, and as it desired to limit the amount of Commissions given by Act No. 92, of 1826, and the Salary of $500, and the Commissions allowed by the Act No. 58, of 1818, to $3,000 per year in all, Congress said so, by appending a proviso to that effect to Act No. 92, of 1826; as without it the Commissions allowed by this Act would have been payable on every dollar received under its provisions. Such was the expression of the legislative will of Congress in 1826, which prevents the limiting proviso of the Commission Act, No. 58, of 1818, from being extended by the U. S. Courts, or by any Officer of the U. S. Government, by construction, to any subsequent Acts. In view of the expression of the legislative will of Congress in 1826, the limiting proviso of the Commission Act, No. 58, of 1818, cannot be applied to limit the amount of Commissions payable under the Delaware and Wea, &c., Indian TREATIES of 1854, and for the additional reason, that

NO Act of Congress could alter the terms of those Indian TREATIES.

Congress, by Act No. 130, of September 27th, 1850 (9 Stat., 496), made the Surveyor General of Oregon Territory also a Register of Lands, with a Salary of $2,500 per year, $4,000 for Clerk-hire, and $1,000 for Office rent, fuel, &c., out of the U. S. Treasury, and, in addition thereto, certain FEES for his own use, paid to him by third persons. BY Act No. 134, of February 14th, 1853 (10 Stat., 158), he was also required to perform the duties of a Receiver of Public Moneys, for which he was allowed an additional compensation of 2 per cent. Commissions on the Moneys received by him for lands sold, not to exceed $4,000 per year, which gave him an annual compensation of $11,500 out of the Treasury of the U. S., and an unlimited amount of FEES per year paid to him by third persons or private parties. This Land Officer performed the duties of three distinct Offices at one time and place, for each of which the Act No. 134, of 1853, allowed him compensation, giving him 2 per cent. Commissions, out of the Treasury of the U. S., on Moneys received by him for lands sold, in a regular, permanent, and safe Office, with plenty of Clerical assistance, in addition to the FEES which he was authorized by law to charge third persons for extra services rendered them.

The foregoing facts fully and clearly show that the Defendant in error, as Special Receiver and Supt. of the sales of the Delaware, and Wea, &c., Indian Trust Lands, is legally and justly entitled, under the Indian TREATIES of 1854, to 1 per cent. Commissions on all of the Indian Trust Moneys received by him for the Indian Trust Lands sold by him, and to the moneys paid out by him, for the expenses of those sales, as charged in his Accounts, and as allowed him by the 2d Auditor and 2d Comptroller in Reports No. 1,749 and No. 1,750, on August 14th and 19th, 1861.

The third question of law raised by the Special Verdict will now be stated and argued. It is as follows:

Third.—The third question raised by the Special Verdict for the opinion of the Court is whether the Defendant in error, as Receiver of Public Moneys and Acting Disbursing Agent, is entitled to Military Bounty Land Warrant FEES, exceeding $2,500 per year, including Commissions on cash sales of Public Lands?

To determine this question, it is only necessary to examine the laws of Congress on the question of Fees from 1796 to 1861. The various modes of compensating Registers and Receivers of District Land Offices, from the origin of the land system in 1796 to May, 1861, was by commissions, Fees, salary, Clerk-hire, &c., at public sales, Clerk-hire at private sales in special cases, compensation to Receivers for guard service and transportion, and the labor and risk of depositing public moneys, and additional salary, and special salaries in some Land Districts, where not much business was done, and where not enough moneys were received from the sale of lands, to pay the salaries of the officers.

The several Acts of Congress compensating District Land Officers, which are referred to by the numbers, will be found in the Digest, &c.

It cannot be disputed that by Act No. 58, of April 20th, 1818 (3 Stat., 466), the Defendant in error was entitled to an annual Salary of $500 and to 1 per cent. Commissions on purchase-moneys received from U. S. lands SOLD, not to exceed $2,500 per year, this being the maximum of Commissions allowed UNDER the provisions of THIS Act; therefore, the question to be decided by the Court is whether the Military Bounty Land Warrant FEES were by any Act of Congress made accountable to the Treasury of the U. S., or whether the amount of them was in any way limited by any Act of Congress previous to July 1st, 1862; as without such an Act of Congress those Fees cannot lawfully be claimed or held to be public moneys, or intended by Congress for revenue purposes. It will be clearly shown that no such Act of Congress was enacted previous to nor during the term of the Defendant in error, and that those Fees were intended by it for the private use of the Defendant in error.

The Certified transcript of the Accounts of the Defendant in error, put in evidence by the U. S., show that he was not allowed the full amount of the 1 per cent. Commissions on moneys received for lands SOLD, due to him under the provisions of Act No. 58, of 1818, as is shown by paragraph 10 of the Special Verdict; and which balance he now claims, together with the Military Bounty Land Warrant Fees, paid by him into the Treasury of the U. S., under an illegal order of 1857. To deprive the Defendant in error of those Fees it was claimed that the limiting proviso of the Commission Act No. 58, of April 20, 1818, (3 Stat. 466,) could be extended by construction to the Military Bounty Land Warrant Fee Acts, giving additional compensation to District Land Officers for extra services performed by them for third persons, or for private parties. We will show that Congress repeatedly expressed its legislative opinion from and after 1826, that the limiting proviso of the Act of 1818 did NOT extend to any subsequent Act giving additional Commissions or Fees, and that it also expressed its legislative will that this proviso should Not be extended by construction to subsequent Acts, giving additional compensation of any kind by any other Act; and finally, that Congress, on May 30th, 1862, (12 Stat., 409,) passed an Act making all Fees of every kind accountable to the Treasury of the U. S., and it prohibited the Act from going INTO OPERATION for more than a month after it was passed and approved of; which significant fact settles the question that previous to July 1st, 1862, (12 Stat., 409,) ALL FEES received by the Defendant in error, were allowed by Congress for his own use, without limit as to the amount of them received by him per year from third persons.

The following Acts will show how Congress distinguished between Fees intended as public moneys, or for revenue purposes, and Fees intended for the use of District Land Officers.

No. 1.—An Act (May 18th, 1796,) providing for the sale of lands in the North West Territory. (1 Stat., 464.)

Section 4 required certain public lands to be offered for

sale at "public vendue." Section 6 required some of those lands to be sold at Pittsburg, under the direction of the Governor of the Western Territory, and such person as the President should specially appoint for that purpose. Section 7 required all purchase-money to be paid to the Treasurer of the U. S., or to the person appointed by the President for that purpose. Section 11 required the following Fees to be paid to the Treasurer of the U. S., or to the RECEIVER in the Western Territory: For a Certificate fora tract containing 1–4 of a Township, $20; for a Certificate for a tract containing 640 Acres, $6; for each Patent for 1–4 of a Township, $20; for a Patent for 640 Acres, or a Section of land, $6; which Surveying and Patent Fees the receivers thereof were required to account for to the Treasury of the U. S. as a part of the price of the public lands. Section 12 required the Receiver of Public Moneys for the Western Territory, appointed under this Act, to receive, safe-keep, and convey to the Treasury the moneys he received; for which he was to be entitled to a compensation to be thereafter fixed. By this Act the lowest price of the public lands was $2 an Acre, and the Surveying and Patent Fees.

No. 2.—An Act (May 10th, 1800.) to amend the Act entitled "An Act providing for the sale of the lands of the U. S. in the Territory N. W. of the Ohio, and above the mouth of the Kentucky River." (2 Stat., 73.)

Sec. 1 created four Land Offices in the N. W. Territory, and required the President, by, and with the advice and consent of the Senate to appoint a Register of lands for each Office. Sec. 4 required a sale of public lands under the direction of the Register of each District, and of the Governor of the N. W. Territory as Superintendent of those sales. Sec. 5 prohibited the sale of any public lands at less than $2 per Acre in Specie or in evidences of the public debt, and a Fee of $6 for every Section of land, $3 for every 1-2 Section, "for surveying expenses," as a part of the purchase-money, for said lands. Sec. 6 required all purchase-money to be paid to the Treasurer of the U. S., or to such

person or Officer as should be appointed, Receiver of Public Moneys, for lands of the U. S. at each of the places where the public and private sales of lands were to be made; who were required to transmit to the Treasurer of the U. S. "an account of all the public moneys" received by them, together with the moneys. The Receivers of Public Moneys for sales under this Act, and also those under Act No. 1 of 1796, were allowed a Commission of 1 per cent. on ALL of the purchase-moneys received by them, without any limit to the amount of them per year. Sec. 12 allowed to each Register of lands a Commission of 1-2 per cent. on ALL of the moneys expressed in the receipts by them filed, and entered; and they were also allowed "for their own use," from the several parties who applied for lands, for services rendered them, the following FEES: For every original application for land and a copy thereof, for a Section of land $3; for a 1-2 Section $2; for every Certificate that 1-4 of the purchase-money had been paid, 25 cents; for every subsequent receipt for moneys paid, 25 cents; for the final settlement of account and for the final Certificate of the same, $1; for every Copy, either of an application, or of the description of any Section, or 1-2 Section, or of the plat of the same, or of any entry made on their Books, or of any Certificate previously given by them 25 cents for EACH; and for any general inspection of the Books of surveys or general plat made in their presence, 25 cents. Sec. 13 required the Superintendents of sales under this Act and Act No. 1, of 1796, to be allowed $5 per day, for every day engaged in that business, and in making up the papers of the sales; and they were also allowed a reasonable compensation for books, stationery, and Clerk-hire, in the settlements of their Accounts; this Sec. is the law at this time on this subject. Sec. 14 made the Fee for a Patent for a 1-2 Sec. of land $4, and for a Sec. $5, which the receivers thereof were required to "account for" and pay over to the Treasury of the U. S., as a part of the price of the lands sold, as required by Sec. 6, of Act No. 1, of 1796.

No. 3.—An Act (approved March 3, 1801,) giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers in the Territory of the United States, northwest of the Ohio river. (2 Stat., 112.)

Sec. 1 fixed the price of these lands at $2 an Acre, and the Surveying and Patent Fees, required by Act No. 2 of May 10th, 1800. Sec. 2, required every claimant to deliver to the Receiver of Public Moneys at Cincinnati, a written notice of his claim or contract. Sec. 3 made it the duty of the Receiver of Public Moneys, on being paid by the claimant the FEES allowed him "to his own use," by Sec. 6 of this Act, to receive every such notice of claim, and put it on file, to be submitted to the Commissioners, to settle and adjust such claims. Sec. 4 authorized the President of the U. S. alone, to appoint two persons to act with the Receiver of Public Moneys at Cincinnati to be a Board of Commissioners for the purpose of ascertaining the rights of persons claiming the benefits of this Act, who had filed with the Receiver notices of their claims or contracts, as required by Sec. 3 of this Act. Sec. 5 provided, that upon the application of any person who should produce the Certificate of the Commissioners, to the Register of lands, and pay to him the Fees allowed to him, "for his own use," by Sec. 12 of Act No. 2 of May 10th, 1800, it was made his duty to receive and file such Certificate. Sec. 6 provided, that the Receiver of Public Moneys should be entitled to receive "to his own use," from the several claimants, the following Fees: For filing a Notice, and evidence or statement of a claim, 25 cents; for giving a Copy thereof, 12 1-2 cents for every 100 words; and the said Commissioners, as full compensation for their services, AS SUCH, were "JOINTLY" to have and receive from the respective CLAIMANTS for every determination and recording the same in their Book, at the rate of $3 for every Section; and FOR every Certificate DIRECTED to the Register and entering a copy thereof in their Book, at the rate of $1 for every Section. Sec. 9 provided, that the duties, FEES and Emoluments of the Receiv-

ers and Registers, under this Act, as far as the same might be consistent, should be the same as provided for by Act No. 2, of May 10th, 1800.

No. 4.—An act (approved March 3, 1803), regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee. (2 Stat., 229.)

Sec. 3 granted to certain persons in the Mississippi Territory who inhabited and cultivated lands therein at the date of this Act a preference, as purchasers of U. S. lands in said Territory at $2 an acre, and the payment of the Surveying and Patent Fees to the U. S. and certain Fees to the Land Officers, as provided for by Act No. 2, of May 10th, 1800. Sec. 4 created two Land Offices: one in Adams County, west of Pearl River, and one in Washington County, east of said River. The President was required to appoint a Register and Receiver for each of said Offices. Sec. 5 required every person claiming lands under the first three Sections of this Act to file with the Register of lands a Notice in writing, stating the nature and extent of his claim, and to deliver to the Register, to be recorded, every grant, order of survey, deed, conveyance or other written evidence of his claim, for which each claimant was required to pay to the Register a Fee of 12 1-2 cents for every 100 words contained in such written evidence of their claims. Sec. 6 made the Register and two other persons, to be appointed by the President alone, Commissioners in each of said land Districts, for the purpose of ascertaining the rights of claimants under the 1st, 2d, and 3d Sections of this Act. Each Board was allowed a Clerk; they were required to issue a Certificate to each claimant for every tract of land claimed and confirmed under this Act. To each person awarded a right of pre-emption under the 3d Sec. of this Act, each Board was required to issue a Certificate, directed the Register. It was further provided that when a party claimed any lands under the first three Sections of this Act which were also claimed by the holder of a British Patent,

duly recorded, &c., and which claim was not confirmed by the Articles of Agreement between the U. S. and Georgia, the Commissioners of each Board were required to issue to the claimant a Certificate, upon the payment by such claimant of $2 to the Clerk of the Board issuing the same. Sec. 13 provided that the Registers and Receivers appointed under this Act should receive the same "FEES and Compensation" as the District Land Officers north of the Ohio River, and that the Registers should be paid 25 cents for entering each Certificate granted by the Commissioners. The Commissioners under this Act were each allowed a Compensation of $2,000 "for the whole of their services," except the Registers, who were allowed only $500 "for their services as Commissioners." The Clerks of the Boards of Commissioners were each allowed $750. The Superintendents of Public sales were each allowed $6 per day for the time occupied in selling and completing the papers of the sales.

No. 5.—An Act (approved March 26, 1804) making provision for the disposal of the public lands in the Indiana Territory, and for other purposes. (2 Stat., 277.)

Sec. 2 created three land Offices: one at Detroit, one at Vincennes, and one at Kaskaskia, and required a Register and Receiver, to be appointed for each of said Offices. Sec. 3 made it the duty of any one claiming lands in either of the Districts created by this Act, to file with the Register a written Notice, on or before January 1st, 1805, stating the nature and extent of their claims, and every grant, order of survey, deed, conveyance, or other written evidence of the claim, and to pay to the Register a FEE of 12 1–2 cents, for every 100 words for recording the same. Sec. 4 made the Registers and Receivers in each of those districts, Commissioners to examine the rights of claimants to lands therein. Each Board of Commissioners was authorized to appoint a Clerk. Each Commissioner and Clerk was allowed a Compensation of $500, "in full for his services as such." Sec. 5 provided for the public and private sales of public lands

in those Districts. The Registers and Receivers in each District were made Superintendents of public sales. Sec. 7 continued in force Act No. 3, of March 3d, 1801, with certain alterations and amendments, one of which made the Register and Receiver at Cincinnati "perform the same duties, exercise the same powers, and enjoy the same emoluments," which by Act No. 3, of 1801, were invested in the Commissioners created by that Act. Sec. 13 prohibited the Fees, payable by former laws to the U. S. for Surveying expenses, as a part of the price of the lands from being demanded of or paid by the purchasers of lands, from and after July 1st, 1804. By Sec. 14, each Register and Receiver in the U. S. from and after April 1st, 1804, was allowed an additional 1-2 per cent. Commissions on all purchase-moneys derived from the sale of lands in their respective Districts; and an annual Salary of $500, except to the Register and Receiver at Marietta, Ohio, who were each allowed a Salary of only $200 per year. From and after April 1st, 1804, Registers were prohibited from demanding or receiving from purchasers of lands, any Fees "for the entry of lands and for Certificates of moneys paid," which Sec. 12, of the Act of May 10th, 1800, allowed them to charge the purchasers of lands for the use of those Officers. The balance of the Fees allowed by Sec. 12, of Act No. 2, the Registers were allowed to charge and receive "for their own use," from third persons. Sec. 15 of this Act, No. 5, prohibited the purchasers of lands from being charged any Patent Fees, as a part of the price of the public lands, from and after April 1st, 1804. Sec. 17 allowed Superintendents of the public sales $6 per day.

No. 6.—An Act (approved March 27, 1804) supplementary to the act entitled "An Act regulating the grants of land and providing for the disposal of the lands of the United States south of the State of Tennessee." (2 Stat., 303.)

Sec. 1. Allowed claimants to lands in the Mississippi Territory, until November 30th, 1804, to file Notice in writing of their Claims with the Register of lands, and have

the same recorded by paying him the Fees allowed him by Sec. 5, of Act No. 4, of March 3d, 1803. Sec. 5 of this Act No. 6, authorized the Board of Commissioners for the District West of Pearl River to employ an assistant Clerk and also a translator of the Spanish language; and the latter was authorized to receive for recording the evidences of claims the Fees, which Act No. 4, of 1803, required the claimants to pay, and he was also allowed $50 per month, out of the Treasury of the U. S., provided that the whole compensation, "other than that arising from Fees," paid by third persons, should not exceed $600 per year; the assistant Clerk was allowed a sum, not to exceed $500, for his services; and each Commissioner of this Board, in addition to the compensation fixed by Act No. 4, of 1803, was allowed $6 per day for every day's attendance "on the Board," after November 30th, 1804; provided, that this additional compensation should not exceed $2,000, for each of said Commissioners.

The foregoing six Acts of Congress very clearly show how it distinguished between Fees intended for revenue purposes or as public moneys, and Fees intended for the use of District Land Officers. All moneys intended for revenue purposes, the receiver of them was explicitly required to account for, and pay into the Treasury of the U. S.; and unless an Act of Congress can be found, which was enacted previous to May 6th, 1861, explicitly requiring the Military Bounty Land Warrant Fees received by the Defendant in error, from the holders of Warrants for whom he located them, to be accounted for, and paid into the Treasury of the U. S., either in whole or in part, it would be a gross violation of the intention of Congress to declare them, or any part of them, public moneys, and would be an invasion of the legal rights of the Defendant in error.

Act No. 5, of March 26th, 1804, prohibited the purchasers of lands from being charged Surveying and Patent Fees for revenue purposes, from and after April 1st, 1804. Which from that time to and after May 6th, 1861, left NO Fees or moneys, except purchase-moneys, derived from the

sale of lands, accountable to and payable by law into the Treasury of the U. S., as the several Acts of Congress, compensating District Land Officers contained in the Digest, &c., clearly show.

Acts Nos. 2, 3, 4, 5 & 6, each authorized Registers and Receivers to charge third persons Fees "for their own use," to an amount limited only by the extra services rendered those persons, in addition to the compensation which those Acts required them to be paid out of the Treasury of the U. S., which in every case was limited in amount, in order to prevent any unusual or excessive demand from being made on the Treasury. The compensation paid to District Land Officers, out of the Treasury was NOT confined to the Regular Salary of $500 per year to each, and to the 1 & 1-2 per cent. Commissions allowed the Receiver of Public Moneys on all of the purchase-moneys received by him for lands sold, and to the 1 per cent. Commissions allowed the Register of lands; but they were allowed additional compensation out of the Treasury for additional services; and clerks and assistant clerks who were paid out of the Treasury of the U. S. a fixed compensation; all of which was in addition to the FEES which they were allowed to charge and receive from third persons "for their own use."

Such was the system established by Congress in the origin of the land system, for compensating District Land Officers, and which Congress steadily adhered to until after the expiration of the term of the Defendant in error, on May 6th, 1861.

The Acts from No. 7 to No. 57, show a steady adherence to the system adopted by Congress, of compensating District Land Officers. Acts 36 and 37, show unmistakably that Fees from third persons and additional compensation out of the Treasury were allowed for the use of District Land Officers by Congress, for additional or extra services under particular Acts.

Act No. 58, of April 20th, 1818 (3 Stat., 466), changed the Commissions of 1 & 1–2 and 1 per cent. allowed District Land Officers on ALL purchase-money derived from the sale

of lands, to 1 per cent. Commissions and limited the amount of them to $2,500 per year. This Act left the regular Salary of $500 per year, allowed by Sec. 14, of Act No. 5, of March 26th, 1804, unchanged, making the compensation for Salary and Commissions, received under the provisions of this Act No. 58, $3,000 per year.

To show the error of attempting to extend the limiting proviso of the Commission Act No. 58, by construction to all other compensation allowed the Defendant in error, it is only necessary to call attention to the following Act:

No. 61.—An Act (approved March 3, 1819,) for adjusting the claims to land, and establishing land offices in the Districts east of the island of New Orleans. (3 Stat., 528.)

Sec. 5 Created two Land Offices for Districts in Louisiana: for the District west of Pearl River, at St. Helena Court House, and for the District east of Pearl River, at Jackson Court House, and required a Register and Receiver to be appointed for each of said Land Offices, whose duties and compensation were to be the SAME, as other Registers and Receivers of the several Land Officers in the U. S. Sec. 6, and Sec 7, allowed to the Registers of lands in these two Districts, the SAME Fees, for recording evidences of claims filed with them on or before July 1st, 1820, as were allowed by Act No. 30, of 1812. Sec. 10 allowed the Register and Receiver in each of these Districts to appoint a Clerk, and each Register and Receiver was allowed as a compensation "for their services in relation to said claims," at the rate of $1,500 a year, and each of the Clerks at the rate of $1,000 a year, provided, that NOT more than eighteen months compensation should be allowed to each Register, Receiver, and Clerk, in each of those Districts, for their services in relation to said claims.

These Land Officers were also entitled to the regular Salary of $500, and 1 per cent. Commissions on purchase-moneys, to the amount of $2,500 per year, under the limiting proviso of the Salary and Commission Act No. 58, of April 20th, 1818, and to such Fees, from third persons, as was allowed them by other Acts, especially by Acts No. 2,

of May 10th, 1800, and No. 30, of April 25th, 1812. (2 Stat. 713.)

Act No. 30 related to titles and claims to lands, in Louisiana east and west of Pearl River. Sec. 4 required the claimants to pay to each Register certain Fees for recording the evidence produced by the claimants. Sec. 9 allowed each Commissioner of land claims, at the rate of $1,500 a year, and each Clerk, at the rate of $1000 a year; and $750, additional compensation was allowed to one Commissioner, and to his Clerk, $500, and to the other, after making his report, an additional compensation of $1000 was allowed him, and his Clerk was allowed $750, as full compensation, for their services, UNDER this Act, No. 30.

Sec. No. 5, of Act No. 62, of 1820, (3 Stat., 566,) gave each Register and Receiver $5 per day for Superintending the public sales of lands, and for the time occupied in making up the papers of the sales. The adjustments of the Public Land Accounts of the Defendant in error, by the General Land Office, and the 1st Comptroller of the Treasury; as duly Certified to and submitted in evidence show, that this compensation was allowed him, in addition to the Salary and Commissions on purchase-money allowed him, under the provisions of Act No. 58, of April 20th, 1818 (3 Stat. 466); thus showing, that his compensation from ALL sources was NOT limited, either by law or by the General Land Office, or by the 1st Comptroller of the Treasury, to the $3,000 per year, for Salary and Commissions allowed him by Act No. 58, of April 20th, 1818.

The following Act clearly shows, that the limiting proviso of the Act No. 58, of April 20th, 1818, was NOT intended by Congress, to be extended, by construction or otherwise, to any subsequent Act of Congress giving to the Defendant in error, additional compensation:

No. 64.—An Act (approved May 11, 1820,) to revive the powers of the Commissioners for ascertaining and deciding on claims to land in the District of Detroit, and for settling the claims to land at Green Bay and Prairie des Chiens, in the Territory of Michigan. (3 Stat. 572.)

Sec. 1 revived the powers of the Commissioners created by Acts Nos. 13, of 1807, and 29, of 1812. Sec. 2 authorized the Board of Commissioners, composed of the Register and Receiver and the Secty. of the Territory of Michigan to employ an Agent. Sec. 3 gave to each Commissioner and the Agent $500, compensation for services under this Act, together with the recording Fees to the Agent, of 25 cents for every claim filed with him, and the Fee of $1 to the Register, from each person to whom he issued a Certificate of confirmation of donation rights, as provided for by Acts Nos. 13, of 1807, and 29, of 1812.

Sec. 3, of Act No. 13, of March 3d, 1807, (2 Stat., 437,) gave the Register $1 for each Certificate of confirmation issued by him, to claimants to lands. Sec. 2, of Act No. 29, of April 23d, 1812, (2 Stat., 710,) required each person claiming a donation of land in virtue of this Sec., to file a notice in writing with the Register, and pay to him a Fee of 25 cents for filing the same. He was also required to issue to the claimants a Certificate of confirmation upon being paid a Fee of $1 for each Certificate issued, as provided for by Sec. 3, of the Act of March 3d, 1807.

No. 65.—An Act (approved May 11, 1820,) supplementary to the several Acts for the adjustment of land claims in the State of Louisiana. (3 Stat., 573.)

Sec. 2 authorized any person or persons claiming lands west of the Mississippi River, including the Island of New Orleans, under any Spanish grant, &c., whose claims had not been filed, to do so, in the District Land Offices, on or before December 31st, 1820, with the evidence in writing of their claims; which the Register was to record, upon being paid a Fee at the rate of 25 cents for every 100 words. Sec. 4 authorized claimants, who had filed Notices of their claims in the District Land Offices, and whose claims had NOT been confirmed, to furnish additional evidence, in writing or other testimony, on or before December 31st, 1820, which evidence, it was made the duty of the Register of lands, to record, upon being paid by the claimants

a Fee at the rate of 25 cents for every 100 words. Sec. 8 provided as follows: "That the said Registers, *in addition* to the compensation herein prescribed, shall received in full for the services required of them, respectively by this Act, the sum of $600, which shall be paid *out of* any money in *the Treasury* not otherwise appropriated."

The foregoing Section of this Act, explicity stated that in "addition" to the FEES paid by third persons to those Officers, they should each be paid $600 out of the Treasury of the U. S., as a compensation for the services required of them, by Act No. 65. For selling lands, entering the sales, &c., and receiving the purchase moneys, &c., those District Officers were also entitled to the Salary of $500 per year, and to the 1 per cent. Commissions on the purchase-moneys, under the provisions of the Salary and Commission Act No. 58, of April 20th, 1818. This also clearly shows that the limiting proviso of the Salary and Commission Act No. 58, cannot be construed to apply to any compensation of any kind NOT received under the provisions of that Act.

Having shown that Congress, in 1800, established the system of compensating District Land Officers for extra services rendered to third persons, by Fees, paid to them by those persons, "for the use" of those Officers; we will proceed to show that Congress steadily adhered to this policy until after May 6th, 1861, when the Defendant in error ceased to be a District Land Officer.

Act No. 68, of May 15th, 1820, (3 Stat., 602,) authorized the Governor of Illinois to obtain from the Register of lands at Vincennes, in Indiana, an abstract of certain lands, by paying to the Register a Fee, at the rate of 10 cents for each separate entry, of which a Copy was given. Act No. 69, of May 15th, 1820 (3 Stat., 605), in Sec. 1, authorized the inhabitants of Peoria, Illinois, who claimed a lot of lots therin, to deliver to the Register of lands at Edwardsville, a written Notice of the claim, and to pay him a Fee of 25 cents for each claim, as full compensation "for his services under this Act."

Act No. 70, of March 2d, 1821, (3 Stat., 612,) for the

relief of purchasers of U. S. lands, by Sec. 7 required those entitled to the benefits of this Act, to sign and file with the Registers in the several Land Districts on or before September 30th, 1821, a written declaration expressing consent to the terms of this Act, and each party was required by Sec. 7 to pay to the Register a FEE of 50 cents " for receiving, recording, and filing the same." Sec. 8 required each party relinquishing any lands to pay to each Register and Receiver, a FEE of 50 cents, for each half quarter Section, half Section, Section, or legal subdivision of a fractional Section so relinquished. This is an important Act in the history of the land system. Act No. 71, of April 20th, 1822, (3 Stat., 665,) by Sec. 4 it was made the duty of District Land Officers to do the work required by Sec. 8, of Act No 70, of 1821, and as compensation therefor they were allowed the FEES provided for by Sections 7 and 8, of Act No. 70, of 1821.

Act No. 74, of May 8th, 1822, (3 Stat., 707,) supplementary to the several Acts for adjusting the claims to lands, &c., in the Districts east of the Island of New Orleans. Sec. 6 required the Registers and Receivers to grant to every person or persons, who claimed lands in those Districts, a Certificate of the nature of the claim, and quantity of land allowed, for which the CLAIMANT was REQUIRED to pay a FEE of $1 to be DIVIDED between the Register and Receiver.

Act No. 75, of May 8th, 1822, (3 Stat., 709,) to settle claims and titles to lands in the Territory of Florida, by Sec. 1 created a Board of three Commissioners, for which services they were allowed $2,000 to each, to be paid quarterly from the Treasury. Sec. 2 allowed the Board to appoint a Secretary at a Salary of $1,250, to be paid quarterly from the Treasury. Sec. 4 required claimants to lands to file a Notice of their claims with the Commissioners, to be recorded by the Secretary, for which the claimants were required to pay a FEE of 10 cents for every 100 words so recorded. The Secretary was also allowed to charge a FEE of 25 cents for each subpœna issued. It was provided that

these FEES should be applied to the payment of the services of the Secretary, and any excess over $1,250, which was the compensation to be paid to the Secretary for his services, was to be paid over to the Commissioners, TO BE DISPOSED OF BY THEM. Act No. 80, of February 28th, 1824, (4 Stat., 6,) extended the time for the settlement of private land claims in the Territory of Florida. Sec. 4 prohibited any Fees from being charged claimants for recording titles to lands claimed. Sec. 5 required the former and the then Secretary to the Commissioners, who had been paid their salary of $1,250 out of the Treasury of the U. S., which was declared by law to be the full compensation for their services, to pay over all Fees received by them to the Commissioners, as required by the original Act No. 75, to be applied by them to defray their expenses. Sec. 7 fixed the compensation of each Commissioner at $2,000 per year out of the Treasury of the U. S.; and those Fees paid by third persons.

Act No. 81, of May 18th, 1824, (4 Stat., 24,) to provide for the extinguishment of the debt due to the U. S. by the purchasers of public lands.

Sec. 4 DOUBLED the FEES to be paid to the Registers and Receivers, by parties who relinquished lands, under Sections 7 and 8, of the Act No. 70, of March 2d, 1821; which was a Fee of 50 cents to the Register for filing the written consent of a party to the provisions of Act No. 70, and 50 cents to each Register and Receiver for each tract of land or legal sub-division of a fractional Section of land relinquished. These Fees were DOUBLED by this Act.

Act No. 82, of May 24th, 1824, (4 Stat., 31,) in Sec. 3, required each party, who made application for a change of entry, to pay to the Register and Receiver a Fee of 25 cents for every Oath administered and a Fee of 25 cents for every 100 words of evidence received and transmitted to the General Land Office. These Fees were to be divided between the Register and Receiver.

Act No. 83, of May 26th, 1824, (4 Stat., 39,) concerning pre-emption rights in Arkansas.

Sec. 2 required pre-emptors to file with the Register written Notices of their claims, describing the tract claimed, and upon proving to the satisfaction of the Register and Receiver, that the person who filed the Notice was entitled to a pre-emption right, under this Act, Each pre-emptor was required to pay a Fee of $1 to each Register and Receiver, in every case of pre-emption as "a compensation" for their "services."

The Acts from and including No. 85 to No. 90 inclusive, allowed Fees to District Land Officers, paid to them by third persons, and also compensation out of the Treasury of the U. S., in addition to the compensation for Salary and Commissions paid out of the Treasury to those Officers, under the provisions of Act No. 58, of April 20th, 1818, (3 Stat., 466,); but neither of those Fee Acts, nor any preceding Act, from 1804 to 1862, required District Land Officers to account for, or pay any Fees into the Treasury of the U. S., although from and after 1812, the Treasury of the U. S. was greatly in want of revenue. Moreover, those Fees never were claimed as public moneys, NOT even during the War of 1812-'15, and the money panic of 1819. During all this emergency, the only change which Congress made to increase the revenues, affecting the compensation of District Land Officers, was to change the Commissions of Receivers of Public Moneys, from 1 & 1-2 per cent. on all moneys paid for lands sold, to 1 per cent. Commissions under the provisions of Act No. 58, of April 20th, 1818, (3 Stat., 466,) not to exceed $2,500, per year.

The Commission of 1 per cent. allowed Registers of lands was not changed by Act No. 58; but the amount of them was limited to $2,500 per year, by a limiting proviso to that Act; which Congress has always construed to be applicable only to the Commissions received under the provisions of Act No. 58; as will be fully shown.

As Act No. 58, had operated most severely on Receiv-

ers of public moneys, they were the first to be relieved, by Congress, in 1826, when the Treasury of the U. S. admitted of any greater demands on it. The following Act was passed to relieve Receivers of Public Moneys, by amending Act No. 58, of April 20th, 1818:

No. 91.—An Act [May 22d, 1826] to compensate Receivers of Public Moneys for transporting and depositing the same. (4 Stat., 193.)

Sec. 1 required the Secretary of the Treasury to allow Receivers of Public Moneys compensation for the labor, expense, and risk of transporting and depositing public moneys. The circular Orders, under which the Defendant in error made his deposits, will be found on page 124 of the Digest, &c. Sec. 2 authorizes the Secretary of the Treasury to make the same compensation for past services, from and after April 20th, 1818, to Receivers as he made to those who served after May 22d, 1826. This amended Act No. 58 in a very important particular, and shows that Congress intended that District Land Officers should be fully compensated out of the moneys derived from the sale of public lands for their services; it is also a well-known historical fact that several leading members of Congress, previous to 1826, had advocated a system for the disposal of the public lands, which would prevent any surplus revenue from being derived from their sale.

On the same day, Congress expressed its legislative will, that the limiting proviso of the Salary and Commission Act, No. 58 of 1818, should NOT be extended to any subsequent Act giving additional Commissions or additional compensation of any kind, by enacting the following very conclusive Act:

No. 92.—An Act [approved May 22d, 1826] to compensate the Registers and Receivers of the land offices for extra services rendered under the provisions of the Act of the 2d of March, 1821. (4 Stat., 193.)

This Act gave to District Land Officers three kinds of compensation, as follows: Fees authorized by Acts Nos. 70

& 71, and DOUBLED by Act No. 81, to be paid by third persons, to those Officers, to an unlimited amount, for their own use. The amount expended for Clerk-hire, to be paid to them out of the Treasury of the U. S.; and an additional Commission of 1–2 of 1 per cent. was also to be paid to them out of the Treasury on moneys paid by the purchasers of lands, on "relinquishments and discounts"; calculating the value of each acre of land at $2, which was the minimum price of lands purchased previous to Act No. 62, of April 24th, 1820, (3 Stat., 566); with a proviso, limiting the Commission of 1 per cent. on purchase-moneys derived from the sale of lands, allowed by Act No. 58, of April 20th, 1818, and the regular Salary of $500, allowed by that Act, and the additional Commissions, allowed by this Act No. 92, to $3,000 per year; which shows that Congress did NOT think that the limiting proviso of the Salary and Commission Act, No. 58, of 1818, extended to the additional Commissions given by this Act No. 92, and as it was the uniform policy of Congress to prevent any unusual or excessive demand from being made on the Treasury, it appended to this Act No. 92, a limiting proviso; as without it, the 1–2 of 1 per cent. Commissions would have been payable on every dollar paid by "relinquishments and discounts." The Clerk-hire was limited to the amount expended for that purpose, and it was to be in addition to the Fees paid by third persons to the District Land Officers for their own use. This is a very significant Act, as it is a clear expression of the legislative will that the limiting proviso of the regular Salary and Commission Act No. 58, of 1818, should NOT be extended by construction to any subsequent Act giving additional Commissions or compensation of any kind; and it conclusively shows the gross error of claiming that any part of the Military Bounty Land Warrant Fees were intended by Congress for revenue purposes; because the limiting proviso of the Salary and Commission Act No. 58, of 1818, limited the Salary and Commissions received under the provisions of that Act to $3,000 per year.

This Act, No. 92, clearly determines the third question

of law raised by the Special Verdict in Favor of the Defendant in error; in view of the fact that NO Act of Congress can be produced, enacted previous to or during the term of the Defendant in error, which made Military Bounty Land Warrant Fees accountable to or payable into the Treasury of the U. S.; and without such an explicit Act of Congress those Fees cannot be held to have been intended by Congress for revenue purposes.

Acts from NO. 93 to NO. 98 inclusive, allowed District Land Officers Fees from third persons and compensation out of the Treasury of the U. S., in addition to the Salary and Commissions allowed by Act No. 58 of 1818, and the additional Commissions and Clerk-hire allowed by the Act No. 92, of 1826.

The following Act shows that it was the settled and determined purpose of Congress to protect Land Officers in the right to obtain the Fees allowed them, and which they had NOT been required to account for to the Treasury, and were therefore obviously intended for the use of those to whom they were granted.

No. 99.—An Act (approved February 24, 1829,) to authorize the appointment of a surveyor for the Virginia Military District, within the State of Ohio. (4 Stat., 335.)

Sec. 4 gave legal authority to the personal representatives of Col. Richard Anderson, deceased, to require a Bond of $10,000, with good security, from his successor, to pay over to said Anderson's personal representatives all Fees, due or to become due to said Anderson, which should be received by his successor.

Act No. 100, of March 2d, 1829, (4 Stat., 358,) in Sec. 7, authorized the Secretary of the Treasury to make a compensation out of the Treasury to the Receiver at St. Stephens, in Alabama, not to exceed $250, as additonal compensation to the $1,000 paid him under Sec. 2, of Act No. 94, of March 3d, 1827, (4 S., 239,) for duties performed under Act No. 94.

Act No. 101, of May 29th, 1830, (4 Stat., 420,) to grant pre-emption rights to settlers on the public lands.

Sec. 1 granted to every settler or occupant of the public lands, who was in possession in May, 1830, and had in 1829 cultivated any part of it, the right to enter 160 Acres of land, to include his improvements, at the minimum price of U. S. lands.

Sec. 2 required each pre-emptor, before being permitted to enter the land claimed by him, to prove settlement or improvements to the satisfaction of the Register and Receiver of the Land District, and to pay a FEE of 50 cents to each for this service rendered to those pre-emptors.

Act No. 102, of July 4th, 1832, (4 Stat., 561,) for the final adjustment of the claims to lands in the S. W. Land District of Louisiana.

Sec. 1 required persons claiming lands to present their claims to the Register and Receiver on or before July 1st, 1833, with the written evidence and other testimony thereof, to be recorded by those officers, upon being paid by the claimants a FEE of 25 cents for every 100 words. Sec. 5 provided that, in addition to the FEES paid to the Register and Receiver under Sec. 1 of this Act, they should each be paid out of the Treasury of the U. S., for services required by this Act, $500. This Act shows very clearly the error and absurdity of claiming that the compensation of Registers and Receivers from all sources was limited to $3,000 per year previous to 1862, or that any Fees which the officers were not required to account for could be claimed for revenue purposes.

The Acts from No. 103 to 114, inclusive, are all instructive of the various modes adopted by Congress, of granting additional compensation to District Land Officers, for additional services, both by Fees from third persons, and by moneys paid to them out of the Treasury; in addition to the regular Salary of $500 per year and the 1 per cent. Commissions on purchase-moneys, received from the sale of lands, not to exceed $2,500 per year.

Act No. 115, of June 12th, 1840, (5 Stat., 384,) authorized District Land Officers to administer Oaths to certain persons, for which service they were prohibited from charg-

ing or receiving the Fee allowed by Act No. 82, of May 24th, 1824, (4 Stat., 31,) for that service.

Act No. 116, of February 18th, 1841, (5 Stat., 412,) constituted the State of Tennessee an Agent, to sell certain U. S. lands within the limits of that State. Sec. 3 required this Agent to pay to the State of North Carolina a certain amount of the moneys derived from the sales of those lands, and the balance of the moneys, the State of Tennessee, as the duly constituted Agent of the U. S., was explicitly required "to account for" and "pay over" to the U. S. in the Month of January annually.

Congress invariably used but one means of distinguishing between moneys intended by it for revenue purposes and moneys intended by it for the Officer who received them; and this distinction is shown in all of the laws enacted for the compensation of District Land Officers from the origin of land system to this time.

The following Act, No. 117, is one of the important land laws in operation during the term of the Defendant in error. Previous to its enactment, Mr. Clay, of Kentucky, in 1841, as the leading advocate of a Tariff for protection to manufacturers, among other measures proposed to the U. S. Senate, the following:

No. 117.—An Act (approved September 4, 1841,) to appropriate the proceeds of the sales of the public lands; and to grant pre-emption rights. (5 Stat., 453.)

This Act distributed the proceeds of the sales of the public lands among the States and Territories, for the purpose of internal improvements. All of this Act, from Sec. 10 to 15 inclusive, related to pre-emption claims. Sec. 12 required pre-emption claimants, before being permitted to enter the land on which they claimed priority of settlement, to produce proof of settlement and improvement, to the satisfaction of the Register and Receiver, agreeably to such rules as the Secretary of the Treasury should prescribe, and to pay a FEE of 50 cents to each Register and Receiver.

These FEES were admitted by the General Land Office

Circular of November 21st, 1856—put in evidence—to belong to the Officers who received them. That Circular reads as follows: "You have a LEGAL RIGHT to a FEE, in virtue of the 12th Section of the pre-emption Act of the 4th of September, 1841, which declares that each Officer is entitled to receive 50 cents FOR HIS SERVICES in acting upon each case of pre-emption," &c. The accounts of the Defendant in error—put in evidence—show that he was NOT required to account for those pre-emption Fees.

The Acts from No. 118 to No. 122, inclusive, are not of any importance in the argument of the third question of law raised by the Special Verdict.

The following is the first Military Bounty Land Warrant Act, donating lands to soldiers engaged in the War with Mexico:

No. 123.—An Act [approved February 11, 1847] to raise, for a limited time, an additional military force; and for other purposes. (9 Stat., 123.)

This Act authorized an issue of 160 and of 40-acre Military Bounty Land Warrants for each non-commissioned Officer, Musician, or private, who had enlisted for 12 months or for a less time, and who had served in the war. These Warrants were not assignable; they could be located only by the Soldiers to whom they were issued, or by their heirs at law. They could only be located on lands subject to private entry. They could not be located on any lands settled upon and cultivated. Their location increased the labors of Registers and Receivers who located them, but Congress neglected by this Act to give them any compensation of any kind for their services in locating the Warrants for the holders of them.

That Congress did not desire those Officers to do any extra work for third persons without being compensated by them, is shown by the following Acts:

No. 124.—An Act (approved March 1st, 1847,) to establish a Land Office in the northern part of Michigan, and to provide for the sale of mineral lands in the State of Michigan. (9 Stat., 146.)

Sec. 3 provided, that before any persons were permitted to purchase under the provisions of this Act, they should make proof to the Register and Receiver of possession and occupancy of any mine or mines claimed, together with the evidence of the payments of all rents due the U. S., for which services the claimants were to pay a FEE of $1 to each Register and Receiver in each case.

No. 125.—An Act [approved March 3, 1847,] to create an additional land District in the Territory of Wisconsin, and for other purposes. (9 Stat., 179.)

Sec. 3 of this Act, like the 3d Sec. of Act No. 124, permitted persons to make proof of occupancy of mineral lands, and proof of the payment of all rents due to the U. S., for which service the claimants were required in each case to pay to each Register and Receiver a FEE of $1. These Officers were, by these Acts Nos. 124 and 125, entitled to such compensation out of the Treasury of the U. S. as other Registers and Receivers in the U. S. were, by law, entitled to.

Congress in 1847, having failed to give District Land Officers any compensation for their services in locating Military Bounty Land Warrants; In May, 1848, it enacted the following Fee Act:

No. 126.—An Act (approved May 17th, 1848,) *to require the holders* of Military Land Warrants *to compensate the Land Officers* of the United States *for services in relation to the location* of those Warrants. (9 Stat., 231.)

The title of this Act explicitly states that its purpose was to make Warrant holders compensate Land Officers for their services in locating Military Bounty Land Warrants; and the Act entitled each Register and Receiver to require from the holders of Warrants, for the location of a Warrant for 160 Acres, 50 cents, and for a Warrant for 40 Acres, 25 cents, "as full compensation for those services"; with a proviso that no compensation should be charged by either Officer for making a location for the Soldier to whom the Warrant was issued. As these Warrants were not assignable, they were of very limited use.

By this Act Congress said that Land Officers Should be compensated for their services in locating Military Bounty Land Warrants, by Warrant-holders. Those Fees having been given as a compensation for the services of the Officer, they were given for his own use, and not intended for revenue purposes. They never were claimed as public Moneys; but, on the contrary, the Land Department admitted, on November 1st, 1849, in a General Land Office Circular, that they were allowed for the services and use of the Land Officers. (See Digest, &c., p. 71.)

The minimum price of U. S. lands was $1.25 an Acre; a portion of the lands were rated at $2.50 an Acre. The Military Bounty Land Warrants were issued in 1847 for 160 and 40 Acres, but tracts frequently contained fractions over 160 and 40 Acres, and sometimes less; consequently, it was necessary to rate a Warrant, or to say what priced land it might be located on, as, by Act No. 123, they were allowed to be located on any U. S. lands, without any regard to the price of them, which were subject to private entry; for this purpose Act No. 127 was passed (9 Stat., 332,) reckoning those Warrants at $1.25 per Acre for each Acre contained in it, and it required any Acres in the tract in excess of the number of Acres contained in the Warrant, to be paid for. This Act No. 127 also provided that if a Warrant was located on a tract containing a less number of Acres than was contained in the Warrant, "NO claim should exist on the Government to pay any balance on said Warrant in money." That is to say: "The Warrant was NOT Money, and its location was NOT a sale;" and if surrendered by being located on a tract containing a less number of Acres of land than were contained in the Warrant, the holder of it could NOT claim any money for the Acres not located on any lands; nor could any Fees be charged for Acres contained in a Warrant surrendered without being located on any lands.

The date and terms of the following makes it a very significant Act:

No. 129.—An Act (approved September 26th, 1850,)

providing for the examination and settlement of claims for land at the Sault Ste. Marie, in Michigan. (9 Stat., 469.)

Sec. 1 required the District Land-Officers to examine and report upon all claims to lots in Sault Ste. Marie in Michigan. Sec. 3 authorized those Officers to administer Oaths or Affirmations, for which they were authorized to charge each claimant for each Oath a fee of 12 1-2 cents, and also a Fee of 12 1-2 cents for every 100 words of testimony recorded, to be paid by the claimants; which FEES this Act required those Officers to DIVIDE EQUALLY between them. This shows that Congress did NOT intend any Fees paid by third persons to District Land Officers to be claimed as public moneys or for revenue purposes; which they were NOT required to account for. Nor were these Fees ever claimed by the Land or Treasury Departments as public Moneys.

The following Act required the Surveyor-General of Oregon to perform the duties of a Register of Lands, and is in several respects a law which throws much light on the third question of law raised by the Special Verdict. It is as follows:

No. 130.—An Act (approved September 27, 1850,) to create the office of Surveyor-General of the Public Lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands. (9 Stat., 496.)

Sec. 1 required a Surveyor-General to be appointed for the Territory of Oregon. Sec. 2 allowed him an annual Salary of $2,500, and appropriated $4,000 for Clerk-hire in his Office, and $1,000 per year for Office rent, fuel, books, stationery, and other incidental expenses; this made in all $7,500 per year to this office out of the Treasury. Sec. 4 DONATED the lands of Oregon Territory to actual settlers in half Sections and Sections of lands, who resided upon and cultivated the same for four consecutive years, &c.; and the Surveyor-General was required to enter all claims to lands on the records of his Office. Sec. 6 required all settlers claiming donation rights to file Notice of their claims with the Surveyor-Gen. within three months from

the date of settlement; and it was made the duty of the Surveyor-General to survey and mark each claim with the boundaries as claimed, at the request and EXPENSE of the CLAIMANT, for which he was allowed a FEE of $8 per mile for surveying those lines, which Fees he was NOT required to account for, or pay into the Treasury; and of course Congress intended them for the use of the Surveyor-Gen., acting also as a Register of lands. He was required to enter a description of all claims in a Book kept by him for that purpose, and to hear and determine all contests about claims. Sec. 7 specified times when proof of settlement, cultivation, and of continued residence should be made. Sec. 13 required the Surveyor-Gen., under the direction of the Commissioner of the General Land Office, to cause proper Tract-Books to be opened in his Office, &c. The Treasury did NOT derive any revenue from these donated lands, and $7,500 per year out of the Treasury to this one Surveyor-Gen. and acting Register of lands, and in addition thereto a FEE of $8 per mile, paid to him by claimants to the donated lands for his own use, for establishing the boundary lines of the tracts claimed by them, showed the purpose of Congress not only to fully compensate Land Officers, but to allow one person to fill more than one Office at the same time and place, and also allow him compensation for both Offices in the year of 1850.

The Act of 1850 donating lands to persons who had been engaged in the military service of the U. S., is as follows:

No. 131.—An Act (approved September 28, 1850,) granting Bounty Land to certain officers and soldiers who have been engaged in the military service of the United States. (9 Stat. 520.)

Sec. 1 DONATED U. S. lands, to Commissioned, non-commissioned Officers, musicians, and privates, who served in certain wars, for certain periods of time. It authorized an issue of 160, 80, and 40 Acre Military Bounty Land Warrants. Sec. 4 PROHIBITED the Commissioner

of the General Land Office from charging the holders of those Warrants any FEES, on Warrants sent to him to locate, which is indisputable evidence that Congress did NOT intend any part of those Military Bounty Land Warrant Fees for revenue purposes, or such a prohibition would NOT have been made.

Particular attention is called to the fact, that this Act No. 131, did NOT repeal the Military Bounty Land Warrant Fee Act No. 126, of May 17th, 1848, (9 Stat. 231,) nor did Act No. 131 prohibit District Land Officers from charging Warrant holders, the Fees which Act No. 126, of 1848, authorized those Officers to charge for their services, rendered after May 17th, 1848, in locating Military Bounty Land Warrants.

The following related to the settlement of contested land claims on the Pacific Coast, which throws much light on the third question of law raised by the Special Verdict, and which shows how varied were the laws of Congress compensating Officers in the land service:

No. 132. An Act (approved March 3, 1851,) to ascertain and settle the private land claims in the State of California. (9 Stat. 631).

Sec. 1 Created a Board of three Commissioners to settle the claims of persons to lands in California. Sec. 2 allowed this Board to appoint a Secretary. Sec. 3 allowed it to appoint FIVE Clerks. Sec. 17 allowed each Commissioner $6,000 per year; the Secretary $4,000 per year, and each Clerk $1,500 per year. Sec. 18 allowed the Secretary of the Board to charge the claimants to lands certain Fees, for furnishing them with Certified Copies of any papers or records, at the rate of 25 cents for every 100 words, and for issuing writs of subpœna 50 cents for each witness, which FEES, this Section required to be EQUALLY DIVIDED between the Secretary and the Asssistant Clerk.

The only duty imposed on this Board was to hear and decide contested or disputed land claims in California, at an annual cost of $29,500, paid out of the Treasury of the U. S.

In the face of this Act No. 132 it is impossible for any common-sense person to believe that Congress intended that the Defendant in error should settle all contested land claims in the Pawnee Land District in Kansas Territory, and discharge all of the other duties of a Receiver of Public Moneys in said District for the paltry sum of $3,000 per year from all sources; nothing could be more absurd or unjust than to suppose that Congress ever made any laws to operate so unequally and unjustly among land Officers. The Pawnee Land District was in the Eastern and Central part of Kansas Territory; the proposed Cities of Lecompton, Lawrence, Tecumsey, and Topeka were within its limits; the bulk of the early emigrants to that Territory settled within the limits of that Land District. The fierce and bloody pro-slavery and anti-slavery contests were fought within it; the best and most beautiful lands in Kansas laid within its boundaries; a large portion of the tracts contained two or more pre-emption claimants, contending for priority of settlement, &c., which contests had to be patiently and impartially tried and justly decided by the Defendant in error and the Register of lands in that District, which required the employment of several Clerks for that service alone, and for which the Defendant in error did NOT receive any compensation which he would not have received had no such contested land claims arisen for settlement. The cost of living and of doing business in Kansas in 1857 was as great, if not greater, than in California in 1851. The Defendant in error, for his Office expenses and to have received a fair compensation for his laborious services and responsibilities, should have had a gross compensation of Fifteen or Sixteen thousand dollars per year.

The 2d section of the following Act amended the Fee Act No. 126, of May 17th, 1848, by increasing the Fees given by Act No. 126:

No. 133.—An Act (March 22d, 1852,) to make land warrants assignable, and for other purposes. (10, Stat., 3.)

Sec. 1 made all Military Bounty Land Warrants that

had been issued, or that might be issued, assignable, and vested the assignee with all of the rights of the original owner thereof; it allowed pre-emptors to have those Warrants located on lands settled upon by them that had never been offered at public sale at the minimum price of $1.25 per Acre; and also upon lands subject to private sale; and on lands at a greater minimum than $1.25 per Acre, upon the difference being paid in money between each Acre of land valued at $1.25 per Acre contained in the Warrant, and the value per Acre of the land located by it.

Sections 2 and 3 of this Act are as follows:

Section 2. That the Registers and Receivers of the land offices *shall hereafter*, *be severally authorized* to charge and receive, *for their services*, in locating all Military Bounty Land Warrants, issued since the eleventh day of February, 1847, the same compensation or percentage to which they are entitled by law for sales of the public lands for cash, at the rate of $1.25 per acre; *the said compensation to be hereafter paid by the assignees, or holders* of such warrants.

Section 3. That Registers and Receivers, *whether in or out of office* at the passage of this Act, or their legal representative in case of death, *shall* be entitled to *receive*, *from the Treasury of the United States*, *for services heretofore performed*, in locating Military Bounty Land Warrants, the same rate of compensation provided in the preceding section for services *hereafter* to be performed, after *deducting* the amount already *received* by such officers, *under the Act* entitled "An Act to require the holders of Military Land Warrants to compensate the land officers of the United States for services in relation to the location of those warrants," approved May 17th, 1848; *Provided*, That no Register or Receiver *shall receive* any compensation, *out of the Treasury*, for *past services*, who has charged and received illegal Fees for the location of such warrants; and, *Provided further*, that no Register or Receiver shall receive for his services, during any year, a greater compensation than the maximum now allowed by law.

Sec. 2 increased the Fees which Land Officers were allowed to charge and receive from Warrant holders, under Act No. 126 of May 17th, 1848, which were NOT made accountable to the Treasury, and which were never claimed as public moneys; but, on the contrary, were admitted by the Land Department to have been given by Congress for the use of those Officers, "as full compensation for those services," rendered to Warrant holders, who paid those FEES, if either Officer saw proper to charge them. The law did NOT compel them to make any charge. Those Officers might or might not charge Warrant holders for their services, by Act No. 126, of 1848, as they deemed proper.

The 2d Section of this Act No. 133, of 1852, merely increased the Fees, which the Act No. 126, of 1848, allowed each Land Officer to require Warrant holders to pay. It did NOT require those increased Fees to be accounted for, either in whole or in part; but on the contrary, Congress explicitly gave those increased Fees for the private use of those Officers, for greatly increased services, and as a further and more just compensation "for their services, in locating ALL Military Bounty Land Warrants," to be paid by the holders of such Warrants, by authorizing those Officers "SEVERALLY" to charge and receive, from Warrant holders a Fee of 1 & 1–4 cent an Acre on every Acre of donated land, upon which those Officers located those Warrants, for the holders of them; and which Fees were at the same rate of compensation as the 1 per cent. Commissions allowed on purchase-moneys, received from the sale of lands, under the provisions of Act No. 58, of 1818.

Act No. 133, of 1852, empowered each Officer to collect the Fees which the 2d Section authorized him to charge and receive, for his own use, or not charge, as he saw proper. Neither could LAWFULLY charge and receive any Fee payable to the other; the language of this 2d Sec. is so very clear, as to prevent these facts from being called in question. Congress did not imply anything but what the words in

Sec. 2 clearly express; and no inference can reasonably or fairly be drawn from it but what is warranted by the wording of this Section. Moreover, we have shown that Congress, in 1826, expressed its legislative will, that the limiting proviso of the Salary and Commission Act No. 58, of 1818, should NOT be extended by construction to any subsequent Act giving additional compensation, which is conclusive on the subject; and more especially as this 2d Sec. is in accordance with all of the legislation of Congress on the subject of compensation to Land Officers, by FEES from third persons, from 1800 to 1852, as we have fully shown.

Had Congress, in 1852, intended the increased Military Bounty Land Warrant Fees, or any part of them, which the Land Officers were "SEVERALLY" authorized to charge and receive from Warrant holders by Sec. 2, of Act No. 133, to have been accounted for, the Commissioner of the General Land Office would NOT have been ignorant of such a purpose. On March 23d, 1852, only one day after that Act was approved of, he issued a Circular, which was put in evidence, to be found on pages 81 & 82 of the Digest, &c., in which he informed the public that, if parties desired Warrants to be located through the General Land Office, as provided by Act No. 131, of 1850, "they must take the necessary steps to pay to the Register and Receiver the Fees to which they ARE ENTITLED."

Here we have evidence of the fact that the Commissioner of the General Land Office not only admitted that Congress gave those increased Fees for the use of the District Land Officers, but that he did NOT order those Fees, or any part of them, to be accounted for or paid into the Treasury; nor was any such order issued by his successors until in 1857, more than FIVE years after Act No. 133, of 1852, was passed and approved of. Can any one believe that, if Congress had intended those Fees, or any part of them, to have been paid over for revenue purposes, that the Commissioner of the General Land Office, who was in Office at that time, could have been ignorant of that fact; and that the Land Department could have remained in ignorance of it for more

than FIVE years? Most assuredly NOT; it is a gross absurdity to suppose that such a thing was even possible; more especially as Congress, previous to 1857, that is to say, that in March, 1855, it had this subject of Military Bounty Land Warrant Fees under consideration, when it authorized a furthur issue of Those Warrants, by Act No. 149, of March 3d, 1855, (10 Stat. 701,) in the 6th Sec. of which Congress gave to District Land Officers Authority to "SEVERALLY" charge and receive, from the holders of those Warrants for whom they were located, the same rate of Fees as were authorized by Sec. 2 of Act No. 133, of 1852. Congress did NOT require those Fees, or any part of them, to be accounted for or paid into the Treasury, and, therefore, it clearly intended them "as full compensation" to those Officers for the extra services rendered by them to the Warrant holders, who were mainly land speculators.

We will now show how the Military Bounty Land Warrant Acts, No. 123, of 1847; No. 127, of August 14th, 1848, and No. 131, of September 28th, 1850, operated; which will also show why Congress, by Sec. 2, of Act No. 133, of 1852, increased the rate of the Military Bounty Land Warrant Fees, given by Act No. 126, of May 17th, 1848.

A tract of land SOLD containing exactly 160, 80, or 40 Acres of land, or a fraction more, required only one entry in the Accounts of the Receiver of Public Moneys, with duplicate Receipts, issued by him for the purchase-money paid to him. The original Receipt was given to the Register of lands to be entered by him, and to be forwarded to the General Land Office with his quarterly returns. The duplicate Receipt was given to the purchaser of the land, to be held by him until a Patent for the land was delivered to him.

The Military Bounty Land Warrant Acts No. 123, of 1847, and No. 131, of September 1850, authorized an issue of 40, 80, and 160 Acre Warrants, none of which were assignable. They could only be located by the Soldiers to whom they were issued, or by their heirs at law, on land subject to private entry; that is to say, on lands which had

been offered at public vendue or sale. Only one Warrant could be located by one person, which required only one entry on tracts containing only 40, 80, or 160 Acres, and Certificates of location in duplicate. This required no more labor than to enter and receipt for 40, 80, or 160 Acres of land SOLD. Act No. 127, of August 14th, 1848, permitted Military Bounty Land Warrants to be located on tracts, subject to private entry, which contained more Acres than the Warrants, by the holder thereof paying the balance in money; this required two entries—one for the land SOLD, and the other for the location of the Warrant on the DONATED LAND with duplicate Receipts of purchase for the Acres sold, and duplicate Certificates of location for the land donated, which imposed double labor on the Land Officers; for which the Fee Act No. 126, of May 17th, 1848, (9 Stat., 231,) allowed each of them to charge only 50 cents for locating a 160 acre Warrant, and only 25 cents for the location of a 40 acre Warrant; whilst the 1 per cent. Commission on the $200 purchase-money received from the sale of 160 Acres of land gave to each Officer $2, and 50 cents to each on the $50, received from the sale of 40 Acres of land, although there was more labor required to make Warrant entries than those arising from the sale of the same quantity of land. This inequality in the rate of compensation by Fees and Commissions was made up in part by allowing the Land Officers to retain all of the Fees which they received from Warrant holders, whilst the Commissions on the purchase-Moneys received by them out of the Treasury of the U. S. was limited to $2,500 per year to each.

Particular attention is called to the fact that Act No. 131, of September 28th, of 1850 (9 Stat., 520), which granted "BOUNTY LAND" to soldiers who had been engaged in the Military service of the U. S., whilst it did NOT repeal the Military BOUNTY Land Warrant Fee Act, No. 126, of May 17th, 1848, nor prohibit the Land Officers from charging the holders of Warrants the Fees allowed by that Act, the Commissioner of the General Land Office was PRO-

HIBITED from charging the holders of Warrants any Fees on Warrant locations made by him. This was an expression of the legislative will of Congress, that no part of those Fees should be claimed for revenue purposes, or the Commissioner would NOT have been prohibited from charging the holders of Warrants, Fees for locating their Warrants, which they sent to him for that purpose.

The foregoing statement, as to the extra labor imposed on Land Officers, in locating Military Bounty Land Warrants, which were not assignable from 1847 to 1852, and therefore could only be used by the Soldiers to whom they were issued, or by their heirs at law, for which services those Officers were allowed a much less rate of compensation from 1847 to 1852, than they were allowed for less labor in making the entries, &c., of lands sold, will enable any one to understand the intention of Congress in enacting the 3d sec. of the Military Bounty Land Warrant and Fee Act No. 133 of March 22d, 1852.

We have shown, that in 1850, Congress expressed its legislative will, that Military Bounty Land Warrant Fees, allowed by Act No. 126, of May, 1848, should NOT be claimed for revenue purposes. The District Land Officers were NOT required to account for them, nor were they ever claimed as public moneys, which is a significant fact, as the 2d Sec. of Act No. 133, of 1852, merely amended Act No. 126, of 1848, by increasing the rate of Fees allowed by the Act, of 1848, not only because Military Bounty Land Warrants were made assignable, but because the Fees given by Act No. 126, of 1848, were not deemed by Congress in 1852, as is shown by the 3d Sec. of Act No. 133, of 1852, an adequate compensation for the services rendered by Land Officers, from 1847 to 1852, much less for those to be rendered from and after March 22d, 1852, in locating those Warrants, which in 1852 were made assignable.

We will now show why Congress, in 1852, did NOT require Military Bounty Land Warrant Fees to be accounted for, which were to be received by Land Officers under the 2d Sec. of Act No. 133, and why they were allowed by that Sec. to retain ALL of those Fees.

Now mark the difference between the labor of entering tracts of land SOLD, and in making the entries of "BOUNTY LANDS" located by Military Bounty Land Warrants, made assignable, from and after March 22d, 1852.

The SALE of 640 Acres or of a Sec. of land, even when it contained a fraction over 640 Acres, required only one entry and TWO Receipts for the purchase-money, which amounted to $800, and 1 per cent. Commissions, on which, to each Officer, under the provisions of Act No. 58 of April 20th, 1818, amounted to $8. The location of Warrants on 640 Acres of "BOUNTY LAND," by 160 Acre Warrants, required FOUR entries and EIGHT Certificates of location; if located by 80 Acre Warrants, it required EIGHT entries, and SIXTEEN Certificates of location; if located by 40 Acre Warrants, it required sixteen entries, and THIRTY-TWO Certificates of location; and the only compensation for these greatly increased labors was 1&1–4 cent. an Acre, to each Officer, amounting to only $8, paid by Warrant holders, under the 2d Sec. of Act No. 133, of 1852.

The rate of compensation for these Fees was the same as the Commissions on purchase-moneys derived from the SALE of lands; but the labor was NOT the same; and whilst Congress in 1818 limited the amount of Commissions per year, paid out of the Treasury, it did NOT in 1852 limit the amount of Fees, which Land Officers might "SEVERALLY" charge and receive from Warrant holders per year, from and after 1852, for services rendered them.

Having shown why District Land Officers were allowed by Sec. 2, of Act No. 133, ALL of the Fees received by them per year; and having shown the difference between the labors of the Officers who served from 1847 to 1852, before Military Bounty Land Warrants were made assignable, and those who served after March 22d, 1852, when those Warrants were made assignable; and having also shown why Congress did not in 1852 consider the FEE of 50 cents for the entry of 160 Acres of "BOUNTY LAND" by a Warrant, and the Fee of 25 cents for the entry of

40 Acres of "BOUNTY LAND" by a Warrant from 1847 to 1852, a sufficient compensation; shows why Congress enacted the 3d Sec. of Act No. 133; and in doing so we have also clearly shown that District Land Officers who served from February, 1847, to March, 1852, and those who served after March, 1852, did NOT perform the same services; NOR were they performed under the same circumstances.

It would have been very singular, indeed, if Congress, after having made Military Bounty Land Warrants assignable, which greatly increased the labors of District Land Officers in locating those Warrants, had not allowed them a greater rate of Fees and a greater amount of compensation than those Officers received from Warrant holders previous to March 22d, 1852, under the provisions of the Fee Act No. 126, of 1848, and the additional compensation allowed them out of the Treasury under the 3d Sec. of Act No. 133, of 1852, for the services of those Officers previous to March 22d, 1852, or than they were allowed for Commissions out of the Treasury, under the provisions of Act No. 58, of 1818, on the purchase-moneys received from the sale of lands.

The foregoing statement and explanation of the labors of District Land Officers show the intention of Congress in enacting the 3d Sec. of Act No. 133 so clearly that no one can fail to understand it. We will now show precisely what Congress allowed by Sec. 3, of Act No. 133, and how it intended the 2d proviso of Sec. 3 of that Act to be understood and carried out; and how it was understood and carried out by the General Land Office in 1852 and 1853.

1st.—The 3d Sec. of Act No. 133, of March 22d, 1852, entitled each District Land Officer who had served from February 11th, 1847, to March 22d, 1852, to 1 & 1–4 cent an Acre, to be paid out of the Treasury, on every acre of "BOUNTY LAND," on which they had located Military Bounty Land Warrants, from 1847 to 1852, less the Fees received by them from the Warrant holders, for whom they located them under the provisions of the Fee Act No. 126,

of May 17th, 1848 (9 Stat., 231). But as the policy of Congress from and after April 20th, 1818, was to limit the amount of compensation to be paid out of the Treasury to District Land Officers, it added the 2d proviso to this 3d Sec., so as to limit the additional compensation given by it, less those Fees and the Commissions on purchase-moneys, which they had received from the Treasury to $2,500 in all per year during any year from 1847 to 1852. Congress, by Act No. 92, of 1826, had said that the limiting proviso of the Commission Act No. 58, of April 20th, 1818, (3 Stat., 466,) did NOT extend to any subsequent Act giving additional compensation to District Land Officers out of the Treasury; and the Congress of 1852, by appending the 2d proviso to this 3d Sec., also expressed its opinion that the limiting proviso of the Commission Act No. 58, of 1818, did NOT extend to this or to any subsequent Act giving additional compensation, and by this 2d proviso it also expressed its legislative will that the limiting proviso of Act No. 58, of 1818, should NOT be extended by construction to Act No. 133, of 1852. Congress clearly intended the 2d proviso of Sec. 3, to apply ONLY to the 3d Sec. of Act No. 133, of March 22d, 1852.

2d.—Under Section 3 and its 2d proviso, District Land Officers who served from February 11th, 1847, to March 22d, 1852, and HAD RECEIVED out of the Treasury of the U. S. $2,500 Commissions on purchase-moneys derived from the sale of lands per year, during any year, from 1847 to 1852, were NOT entitled to any of the additional compensation out of the Treasury, during those years, provided for by Sec. 3 and its 2d proviso; but this 3d Sec. and its 2d proviso ALLOWED those Officers to retain ALL of the FEES paid to them by Warrant holders, per year, from 1847 to 1852, under the Fee Act NO. 126, of May 17th, 1848, in addition to the $500 Salary and $2,500 Commissions, making $3,000 per year on these two items received by those Officers out of the Treasury, under the provisions of the salary and Commission Act No. 58, of April 20th, 1818, which facts prove indisputably that Congress did NOT

intend the 2d proviso of the 3d Sec. as an "Independent proposition" to be applied or extended by construction to the Fees which District Land Officers were "SEVERALLY" authorized to charge and receive from Warrant holders from and after March 22d, 1852, under the 2d Section of Act No. 133, of 1852, for whom those Officers located Military Bounty Land Warrants on "BOUNTY LANDS." The foregoing proves conclusively that the Defendant in error was entitled to ALL of the Fees received by him per year from Warrant holders for whom he located Military Bounty Land Warrants on "BOUNTY LAND" under the 2d Sec. of Act No. 133, of 1852; and to $500 Salary per year, and to 1 per cent. Commissions on the purchase-money received by him from lands sold—not to exceed $2,500 per year as limited by the proviso of Act No. 58, of April 20th, 1818; which Commissions averaged only about $300 per year during the term of the Defendant in error.

3d.—Any Register or Receiver, during any year from February 11th, 1847, to March 22d, 1852, who had NOT received from the Treasury $2,500 in Commissions on purchase-money from lands SOLD was by Sec. 3 and its 2d proviso entitled to receive out of the Treasury an additional compensation of 1 & 1–4 per cent. an Acre on every Acre of "BOUNTY LAND" located by Military Bounty Land Warrants per year, less the Fees, which had been received from Warrant holders under Act No. 126, of 1848; which additional compensation out of the Treasury, together with the 1 per cent. Commissions out of the Treasury per year, were NOT to exceed $2,500 during any year from February 11th, 1847, to March 22d, 1852

4th.—Notice carefully the word "receive" in Sec. 2, Sec. 3, and in the 1st and 2d provisoes of Sec. 3, of Act No. 133, of March 22d, 1852, and it will be seen that it is an appropriate word, in each place where it is found in those Sections, to accomplish the purposes so clearly intended and expressed by Congress in those Sections. Section 2 says: shall be "SEVERALLY" authorized to "receive" from

the assignee or holders of Military Bounty Land Warrants; Section 3 says: shall be entitled to "receive" from the Treasury of the U. S.; the 1st proviso, of Sec. 3, says: no Register or Receiver shall "receive" any compensation out of the Treasury for past services, who, &c.; the 2d proviso of Sec. 3 says: no Register or Receiver shall "receive" for his services during any year, more than $2,500. Mark well the words "during any year;" obviously meaning any year from 1847 to 1852; these words are not generally found in a limiting proviso.

5th.—If the 2d proviso of the 3d Section of Act No. 133 applied to the 2d Section of that Act, it is obvious, that it would totally defeat the clearly expressed and manifest purpose of Congress in enacting it; as in a Land District where the 1 per cent. Commissions on the purchase-moneys, derived from the sale of lands, amounted after March 22d, 1852, to $2,500 per year; NO FEES could have been lawfully charged or received, in such a District from the holders of Military Bounty Land Warrants, by the District Land Officers "for their services," in having located them; which it is manifest Congress did NOT intend; and any Fees that were received IN SUCH DISTRICTS would have to be returned to the warrant holders who paid them. The entire legislation of Congress from 1796 to 1852, compensating District Land Officers shows that it intended the 2d proviso of Sec. 3 of Act No. 133, to be strictly construed, and confined in its effects to Sec. 3, where it is found, and where it properly belongs, as it is in strict accordance with the uniform policy and rule of Congress to limit any and all compensation to be paid out of the Treasury of the U. S., in order to prevent any unusual or excessive demand from being made on it; whilst on the contrary, it was the policy of Congress during all of that time to give all Fees for the use of District Land Officers, unless they were explicitly required by law to account for them, which was only required in the case of surveying, and Patent Fees, as a part of the price of public lands from 1796 to 1804, from and after which those Fees

were prohibited to be charged or received from the purchasers of lands.

6th.—It is not disputed that the 1st proviso of the 3d Sec. of Act No. 133, of 1852, is applicable only to that Section and the 2d proviso follows it as a continuation of the 1st proviso, and so clearly relates only to the subject treated of in the 3d Sec., as to enable any one to understand that Congress intended by it to maintain the uniform policy of Congress, to limit only the compensation to be paid out of the Treasury of the U. S. The 2d Sec. of Act No. 133, allowed the District Land Officers to retain for their own use all of the Fees paid to them by third persons; and in doing so Congress maintained its uniform policy from 1800 to 1852, in relation to compensating District Land Officers, in part for extra services, by Fees paid by third persons. The 2d proviso of Sec. 3 is NOT within either the words or the reason of the 2d Sec. of Act No. 133, of 1852; and was clearly intended by Congress to be confined to the 3d Sec., in which it is found. No one can reasonably conclude that Congress intended to decrease the compensation of District Land Officers, by an Act which greatly increased their labors and responsibilities.

7th.—Congress by Sec. 2 of Act No. 133 of March 22d, 1852, provided the same rate of compensation for locating Military Bounty Land Warrants, to be paid by third persons, to District Land Officers for their services in locating those Warrants, as the rate of Commissions, which was given by Act No. 58, of April 20th, 1818, to be paid out of the Treasury of the U. S. for their services in selling public lands; but as there was a very great inequality in the two services, and the limited Commissions per year did NOT fully pay for the labor of making the entries of land SOLD, Congress intended to correct this by allowing District Land Officers to retain ALL of the FEES received by them from Warrant holders under Sec. 2, of Act No. 133.

8th.—It cannot be implied that the same rule of compensation should apply to District Land Officers who served

after March 22d, 1852, as to those who served previous to that date; because those who served previous to that date did NOT perform the same services, nor under the same circumstances, and they could only be paid the additional compensation which Congress deemed them entitled to out of the Treasury of the U. S. for PAST services; whilst those who served after March 22d, 1852, for greater labor and responsibilities, were paid for their future services by Warrant holders; and Congress in conformity to its uniform rule or policy limited the additional compensation paid out of the Treasury for PAST services, and left the Military Bounty Land Warrant Fees, paid by Warrant holders for the FUTURE services of those Officers, UNLIMITED IN AMOUNT, as it had done from the ORIGIN of the land system.

9th.—The 2d proviso of Sec. 3, of Act No. 133 of March 22d, 1852, is NOT an independent proposition; as it did NOT limit the compensation of District Land Officers to $3,000 per year for Salary and Commissions on purchase-money, paid out of the Treasury of the U. S. under Act No. 58, of 1818, and for Fees paid to those Officers by Warrant holders, under Act No. 126, of 1848, for locating Military Bounty Land Warrants during any year, from May 17th, 1848, to March 22d, 1852.

10th.—The General Land Office, in carrying out the 3d Sec. of Act No. 133, of 1852, and its 2d proviso, in 1852 and in 1853, did NOT allow any LAND Officers who had received $2,500 for Commissions per year, during any year from 1847 to 1852, any additional compensation out of the Treasury, for having located Military Bounty Land Warrants on "BOUNTY LANDS" during that time; nor did it claim any of the Military Bounty Land Warrant Fees received by them from Warrant holders under the Fee Act, No. 126, of 1848; nor did it order any Fees to be accounted for, and paid into the Treasury, received by Land Officers from Warrant holders, after March 22d, 1852, under the 2d Sec. of Act No. 133, of 1852, until in April, 1857; which facts prove

conclusively that it had no authority in law for requiring those Fees, in 1857, to be accounted for and paid into the Treasury; and we will further show that it knew its act to be illegal.

11th.—The 2d Sec. and its 2d proviso of Act No. 133, of March 22d, 1852, became obsolete when the Land Officers who served "during any year" from February, 1847, to March 22d, 1852, were fully paid; and therefore Congress did not intend it to be applied to Land Officers who served after March 22d, 1852.

It has been shown that the Commissioner of the General Land Office admitted, in a Circular from his Office on March 23d, 1852, only one day after Act No. 133 became a law, that the Military Bounty Land Warrant Fees were NOT public moneys, but that the District Land Officers were entitled to them, as a compensation for their services; and the Secretary of the Interior, in July, 1852, DECIDED that Military Bounty Land Warrants COULD be LEGALLY located WITHOUT the PAYMENT of the FEES which Act No. 133 authorized Land Officers to charge and receive from Warrant holders, and retain for their use, as the following shows: In 1852, at Stillwater, in Minnesota, one Thomas Downs got the Land Officers at that place to locate for him a Military Bounty Land Warrant on a tract of land, without having been required by the Register to pay him the Fees which Act No. 133, of March 22d, 1852, authorized him to charge or not charge for his services, as he saw proper, and that there was issued to Downs a Certificate of location. Subsequently one Robert Craig was permitted by the Register to purchase and enter the tract of land on which a Military Bounty Land Warrant had been located for Downs, who protested against the SALE of his "BOUNTY LAND" to Craig. The case was submitted by the Commissioner of the General Land Office, on July 14th, 1852, to the Secretary of the Interior, who, on July 17th, 1852, decided as follows: "Notwithstanding that the Fees to which the Register was entitled for locating said Warrant were not fully paid, the REGULARITY and COM-

PLETENESS of the LOCATION is shown by the Certificate of location, and I am of the OPINION that Downs is LEGALLY and EQUITABLY entitled to the land, and that Craig's entry should be set aside." (See the records of the Interior Dept.)

Mark carefully the date of this decision, by the Secretary of the Interior. Had the 2d proviso of Sec. 3 of Act No. 133, of 1852, applied to the 2d Sec., or had it mad eany portion of the Military Bounty Land Warrant Fees, allowed by Sec. 2 of that Act accountable to or payable into the Treasury, the Secty. of the Interior could not, and would not, have made such a decision; but on the contrary, it would have been his duty to have ordered the location made for Downs to be set aside, and would have required the Commissioner of the General Land Office, to order District Land Officers to pay those Fees or a portion of them into the Treasury. No one can suppose, that it was possible for the Secty. of the Interior, in July, 1852, to have been mistaken in deciding that Congress intended those Fees for the use of the Land Officers, who charged and received them from Warrant holders.

It will be shown by an Act passed in 1855, authorizing Military Bounty Land Warrant Fees to be "SEVERALLY" charged and received, from Warrant holders, by District Land Officers, at the rate of 1 & 1-4 cent an Acre for Warrants located on "BOUNTY LANDS," that the Secty. of the Interior on July 17th, 1852, understood the 2d Sec. of Act. No. 133 of March 22d, 1852, as Congress intended it to be understood, and as the plain language of that Act shows that it should be understood.

Since April, 1857, the Interior Dept. has labored to sustain its illegal and unjust Order of 1857 requiring Military Bounty Land Warrant Fees, received under Act No. 133 and the Act of 1855, to be accounted for, and in part, to be paid into the Treasury; and to accomplish its unjust purpose, has erroneously asserted, that Congress in legislating to compensate Registers and Receivers, whether in the Atlantic or Pacific States and Territories, HAD uni-

formly limited them to a compensation of $3,000 per year; from all sources. We have fully proven the error of this assertion, by the following acts:

The Salary and Commission Act No. 58 of 1818 (3 Stat., 466), which gave a compensation of $3,000 per year; the depositing Act No. 91 of May 22d, 1826 (4 Stat., 193), which allowed an additional compensation of 10 cents a mile, and the cost of transportation and guard service; the pre-emption Act No. 117 of September 4th, 1841 (5 Stat., 453), which allowed each Officer to charge each pre-emptor a Fee of 50 cents, admitted by the Land Department to have been for the extra services and use of the District Land Officers; the land donation Act No. 130 of September 27th, 1850 (9 Stat., 496), and to provide for the Survey of those donated lands in Oregon, which made the Surveyor General appointed by that Act, also a Register of lands, and gave him a Salary of $2,500 per year, and $5,000 per year for Office expenses, out of the Treasury, and a Fee of $8 a mile, to be paid by land claimants for the use of that Officer in Surveying the lines of claims to lands; and the Act No. 132 of March 3d, 1851 (9 Stat., 631), to settle contested or disputed land claims in the State of California, which gave to each Commissioner a Salary of $6,000 per year, and to the Secretary of the Board an annual Salary of $4,000 per year, out of the Treasury, and certain Fees, paid by land claimants, to be DIVIDED between him and his Assistant Clerk.

The foregoing Acts, together with Sec. 2 of Act No. 133, of March 22d, 1852, and several other Acts passed after 1852, which will be referred to in their order, were all in full operation during the term of the Defendant in error, and which fully refute the erroneous assumption that District Land Officers were limited to a compensation of $3,000 per year, from all sources. Especial attention is called to the wording of all Acts, from 1800 to 1852, authorizing District Land Officers to charge and receive Fees from third persons. The words and phrases used are as follows: "For his own use;" "to his use;" "shall pay to each;" "shall pay to them;" "which shall be DIVIDED;" or as in the

case of Act No. 133, sec. 2, "that the Register and Receiver of the land Office shall hereafter be SEVERALLY authorized to charge and receive" from Warrant holders, &c.

We have not only fully shown that NO Act or Acts of Congress from 1800 to 1852, limited the compensation of Land Officers to $3,000 per year from all sources; but that Fees which those Officers were permitted to charge third persons for extra services rendered by those Officers to them, in NO case were made accountable to the Treasury, and the peculiar wording of each and every Act shows that Congress intended those Fees for the use of the Land Officers who were "each" or "severally" authorized to charge and receive them; or "to be divided between them;" and the following Act not only refutes the erroneous assumptions of the Land Dept., but it shows that Congress allowed 2 per cent. Commissions on purchase-moneys to one Receiver to the extent of $4,000 per year, together with a Salary of $2,500 per year, $5,000 per year for Office rent and compensation for depositing public moneys, out of the Treasury, and a Fee of $8 per mile from land claimants, for his own use, for running lines of Survey for the claimants to the donated lands.

No. 134.—An Act (approved February 14, 1853,) to amend an Act entitled "An Act to create the office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make donations to the settlers of the public lands," approved September the 27, 1850. (10 Stat., 158.)

Sec. 1 allowed the settlers in lieu of the continued occupation required by Act No. 130, of 1850, to purchase the donated lands at $1.25 per Acre, and to pay the moneys into the hands of the Surveyor-General, who was made a Register of Lands by Act No. 130, of 1850, and by Sec. 2, of this Act, No. 134, he was also made a Receiver of Public Moneys. Sec. 4 allowed him a Commission of 2 per cent. on the public moneys received by him from the Sale of lands, limited to a maximum of $4,000 per year for Commissions alone.

Act No. 130 of 1850, allowed this Officer who performed the duties of three Offices at the same time and place, a Salary of $2,500 per year; $4,000 per year for Clerk-hire; and $1,000 per year for Office rent; and this Act No. 134 allowed $4,000 per year for Commissions on purchase-moneys; making to him out of the Treasury a compensation of $11,500 per year; and in addition thereto Act No. 130 of 1850, allowed him to charge and receive from land claimants a Fee of $8 a mile for Surveying their claims; which Fees he was NOT required to account for, and therefore Congress intended them for his private use.

This Act No. 134, also created a Land District, West of the Cascade Mountains in Oregon, and required a Receiver of Public Moneys to be appointed for it, who was allowed an extra compensation of $500 per year out of the Treasury for Office rent, &c.; he was also entitled to the regular Salary, Commissions, compensation for depositing public moneys, &c., paid out of the Treasury to other District Land Officers in the U. S.; and to the pre-emption and other Fees which the laws allowed other Officers to charge and receive from third persons.

A paragraph, in the Appropriation Act of March 3d, 1853, (10 Stat., 189,) for the Civil and Diplomatic expenses, under the head of "PUBLIC LANDS," which appropriated the moneys, necessary to pay Registers and Receivers, for the year ending June 30th, 1854; and to pay the amount remaining due, under Sec. 3 of Act No. 133, of March 22d, 1852, has been referred to, to sustain the claim which the General Land Office set up in 1857, to the Military Bounty Land Warrant Fees, as public moneys. That paragraph and its proviso is as follows:

No. 135.—"PUBLIC LANDS." "Be it enacted, &c., * * For salaries and commissions of Registers of land offices and Receivers of public moneys $141,700: *Provided*, That whenever the amount received at any United States land office, *under* the 3d section of an Act, entitled 'An Act to make land warrants assignable and for other purposes,'

approved March 22d, 1852, has exceeded or shall exceed the amount which the Registers and Receivers, at any such office, are entitled to receive *under said* 3d section, the surplus which shall remain, after paying the amount *so due as aforesaid* to said Registers and Receivers, shall be paid into the Treasury of the United States, as other public moneys, x x."

"For expenses of depositing Public Moneys by Receivers of public moneys $25,000."

"For the incidental expenses of the several Land Offices $37,040." (10 Stat., 204.)

To expose the unworthy deception that has been attempted, by referring to this paragraph and its proviso, to deprive District Land Officers of Military Bounty Land Warrant Fees, it is only necessary to refer to a Circular of the General Land Office, of April 2d, 1852, to be found on pages 82 & 83, of the Digest, &c., in which the following Notice to Registers and Receivers, relative to the additional compensation given by Sec. 3 of Act No. 133, of March 22d, 1852, will be found:

"The accounts of the several Land Officers, for the amounts, to which they are respectively entitled, for services rendered, prior to the passage of the Act (No. 133), will be adjusted, and the amounts remitted to them, in Drafts from the Treasury, soon as practicable."

The foregoing shows that a part of the additional compensation, which was to be paid to Registers and Receivers, under the 3d Sec. of Act No. 133, of March 22d, 1852, had been paid to them in 1852; and that on March 3d, 1853, an amount remained "DUE AS AFORESAID," which was authorized to be paid, OUT OF THIS APPROPRIATION "for Salaries and Commissions."

To make the foregoing proviso clear at a glance, attention is called to the fact that Congress on August 31st, 1852, (10 Stat., 76,) in Section 10, pages 98 & 99, enacted the following, in the Act making appropriations for the Civil and DIPLOMATIC expenses, for the year ending June 30th, 1853: "That where any moneys shall REMAIN UNEX-

PENDED upon ANY appropriation by Congress x x, the moneys so UNEXPENDED SHALL BE immediately thereafter carried, under the direction of the Secty. of the Treasury, to the Account on the Books of the Treasury denominated, the 'SURPLUS FUND,' to remain, LIKE OTHER unappropriated moneys, in the Treasury."

In the light of the foregoing facts, the deception, which has been attempted, by referring to this proviso of the appropriation Act No. 135, of March 3d, 1853, will be apparent, and there cannot be any difficulty in understanding this proviso as Congress intended it to be understood; and as it was understood and carried out by the General Land Office in 1853.

The following is the obvious meaning of the proviso referred to in the appropriation Act of 1853: "That whenever the amount received at any U. S. Land Office," out of this appropriation, "UNDER the THIRD Sec. of an Act, entitled an Act to make Land Warrants Assignable and for other purposes, approved March 22d, 1852, has exceeded" the amount PAID IN 1852, under said 3d Sec., "or shall exceed the amount which the Registers and Receivers, AT ANY SUCH OFFICE, are entitled to receive" out of this appropriation, "under said 3d Sec., the SURPLUS which shall remain, AFTER PAYING," out of this appropriation, "the amount SO DUE, as aforesaid, to said Registers and Receivers, shall be paid into the Treasury of the U. S. as other public moneys," by carrying it to the "surplus fund" account, on the Books of the Treasury, as required by Sec. 10 of the appropriation Act of 1852. The Land Dept., in 1853, did NOT understand that this proviso authorized it to order any of those Fees to be paid into the Treasury; nor was any such order issued until in 1857, over four years after this proviso was enacted; and not until after Congress had refused to make Military Bounty Land Warrant Fees, or any part of them, accountable or payable into the Treasury, as will be fully shown.

The following Act also shows, that Congress has but one way of making any moneys received by public Officers,

public moneys. On February 26th, 1853, Congress passed the following:

An Act to regulate the Fees and Costs to be allowed Clerks, Marshals, and Attorneys of the Circuit and District Courts of the U. S. and for other purposes. (10 Stat., 161.)

Sec. 3 made it the duty of those Officers to account, from and AFTER July 1st, 1853, for all Fees and emoluments of their respective Offices, and to make a return of all the NECESSARY OFFICE EXPENSES of such offices; and each was required with such return made by him, to pay into the Treasury of the U. S. any surplus of the Fees and emoluments of his Office, which his half-yearly return showed to exist, OVER and ABOVE the amount of Fees which this Act authorized to be retained.

The foregoing Act shows that no fees, received by any public Officer in any Office under the U. S. Government, can be claimed or held to be public moneys, unless Congress has by an explicit Act required them to be accounted for and to be paid into the Treasury either in whole or in part; and no one knows this fact better than the Officers of the U. S. Courts. More proof will be furnished on this point before the argument is concluded.

It has also been claimed that Congress made a mistake of fact, in that proviso to the appropriation Act No. 135 of 1853, by saying the Third Sec. of the Act No. 133 of 1852, when it meant the Second Sec. of that Act. To strike out the word 3d Sec. from that proviso and insert the word 2d Sec. would place the Congress of 1853 in a very absurd attitude, and render that proviso utterly meaningless. Under the 2d Sec. of Act No. 133 of 1852, each District Land Officer, was authorized, but not required, to charge and receive from each Warrant holder a certain rate of Fees for his services in locating Military Bounty Land Warrants. Nothing could be charged, and nothing was due until the Warrant was located; and when any charge was made for locating the Warrant the Fees were then fully paid, and NO SURPLUS remained due or could remain due to be paid into the Treasury of the U. S. or elsewhere; and the

amount charged for locating a Warrant could not exceed the rate and amount of Fees allowed by law. Carefully notice the following words, quoted from that proviso: "At any such Office, are entitled to receive, under said 3d Section;" which are of themselves sufficient to satisfy any one, that Congress intended that proviso to apply only to the additional compensation to be paid under Sec. 3 of Act No. 133, of March 22d, 1852. It is a desperately weak and bad cause which is compelled to set up so absurd a claim to bolster it up.

Had Congress made a mistake in the wording of that proviso, it would have corrected the error at the next session of Congress, as the following Acts show:

An Act of April 22d, 1854, to amend the 3d Sec. of an Act, (No. 135, of March 3d, 1853,) making appropriations for the Civil and Diplomatic expenses of the Government for the year ending the 30th of June, 1854, and for other purposes. (10 Stat., 276.) Sec. 1 fixed the compensation of certain Clerks, referred to in the Civil and Diplomatic appro priation Act No. 135, of March 3d, 1853. Sec. 2 corrected an erroneous ruling of the 1st Comptroller of the Treasury, who had excluded certain persons from the benefit of the Civil and Diplomatic appropriation Act of August 31st, 1852.

An Act (May 31st, 1854) to supply deficiencies in the appropriations for the services of the fiscal year, ending the 30th of June, 1854 (10 Stat., 290). Under the head of "Interior Department," in paragraph 1 (page 292), the following will be found: "For the INCREASED compensation of the Secty. of the Interior, from the 4th March, 1853, to the 30th June, 1854, $2.655.55." This Secty. did not object to an "increased compensation" to himself; but, it is said, that he thought District Land Officers might safely be deprived of a portion of the Military Bounty Land Warrant Fees allowed them by the 2d Sec. of Act. No. 133 of 1852; although he did not assume the responsibility of authorizing such an order to be issued, during his term, from March 4th, 1853, to March 4th, 1857.

The 2d paragraph of this Act of 1854, page 292, under the head of "Interior Dept.," gave to the Surveyor General of Oregon, who was also a Register of lands and a Receiver of Public Moneys, an "increased compensation" of $1,327.77 for the fiscal year ending June 30th, 1854; which made his compensation out of the Treasury, for the year 1853, $12,827.77, in addition to the Fees paid to him by the claimants to lands.

NO substitution of the word 2d for the word 3d, in the proviso of the 1st Sec. of the appropriation Act No. 135 of March 3d, 1853, under the head of "Public Lands," can be found in either of the Acts of April and May, 1854, or in any other Act of Congress.

The following Acts of Congress throw much light on the question under consideration, and are deserving of especial attention:

No. 138.—An Act (approved March 3d, 1853) to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes. (10 Stat., 244.)

Sec. 1 gave the Surveyor-General of California a Salary of $4,500 per year. Sec. 2 allowed him $11,000 per year for Clerk-hire, and it allowed him to pay $2,500 per year to a Clerk; it also allowed him $10,000 per year for Office rent, fuel, &c. Sec. 5 authorized the President to appoint a Register of lands, and a Receiver of Public Moneys for the State of California; and instead of allowing them a Salary of $500 per year, to each, and to each of them 1 per cent. Commissions on purchase-money, not to exceed $2,500 per year, and Fees from private parties; it gave to each of them a Salary of $3,000 per year, payable quarterly, out of the Treasury of the U. S., without any regard to the amount of labor performed, or the amount of revenue derived from their Offices; and, in addition thereto, they were each allowed, under Sec. 6 of this Act, to charge, for their own use, a Fee of 50 cents for every pre-emption entry, to be paid by the pre-emptors. The Receiver was also allowed an

additional compensation out of the Treasury for depositing public moneys. NOT enough revenue was derived from the Offices of these Officers to pay their Salaries, by allowing one per cent. Commissions on the revenue paid into the Treasury from their Offices.

The foregoing Act bears even date with the appropriation Act No. 135, with its proviso, under the head of "Public Lands." Three Thousand dollars per year, payable quarterly out of the Treasury, to each of those Land Officers appointed under Act No. 138, and in addition thereto certain Fees to be paid to them by third persons or private parties, was more compensation than they could have earned had they been compensated under the Salary and Commission Act, No. 58, of April 20th, 1818, and other Acts which compensated Land Officers generally.

Act No. 139, of January 18th, 1854 (10 Stat. 265), in relation to the Board to settle disputed land claims in California, in Sec. 2 allowed that Board to appoint three persons to take testimony at a compensation of $10 per day. The foregoing Acts show that Act No. 58, of April 20th, 1818 (3 Stat. 466), had nothing to do with the compensation of Land Officers in California; and completely refutes the erroneous assumption that Land Officers, "alike in the Atlantic and Pacific States and Territories," were limited in the amount of their compensation, from all sources, annually, by the limiting proviso of the Salary and Commission Act, No. 58, of 1818.

Now mark the provisions of the following Act, relative to Oregon and Washington Territories:

No. 141.—An Act (July 17, 1854) to amend the Act (No. 130) approved September 27, 1850, to create the office of Surveyor General of the Public Lands in Oregon, etc., and also the Act (No. 134) amendatory thereof, approved February 19, [14,] 1853. (10 Stat., 305.)

Sec. 6 extended all of the provisions of Act No. 141, and of Act. No. 130 of 1850, and of Act No. 134 of 1853, to all of the lands in Oregon and Washington Territories, and

to carry them into effect, the President was authorized to appoint a Register and Receiver in each of said Territories, at a salary of $2,500 per year to each, and Office rent; with a further compensation to the Receivers for depositing public moneys. It will be shown that on June 5th, 1858, by Act No. 154, (11 Stat., 310,) Congress voted to certain Land Officers in Oregon $7,000 for Clerk-hire, which was a greater compensation to the Land Officers than they could have earned had they been compensated by the regular Salary and Commission Act No. 58 of 1818, and by such other Acts as compensated Land Officers "in the Atlantic States."

It is evident that NO part of Act No. 58 of April 20th, 1818, had anything to do with compensating the Land Officers in Oregon and in Washington Territories; and the foregoing Act No. 141 further refutes the erroneous assertion that "the Act (No. 58) of 1818 fixes a specific sum, as the maximum amount, which" District Land Officers "shall be permitted to receive," per year, from all sources, during the term of the Defendant in error, from 1857 to 1861.

The following relates to New Mexico: Act No. 142 of July 22d, 1854, (10 Stat., 308), created the Office of Surveyor-General in New Mexico, and in Kansas, and Nebraska Territories, and donated the lands in New Mexico to actual settlers, and for other purposes. Sec. 7 also made the lands in New Mexico subject under Act No. 117 of September 4th, 1841, at $1.25 an Acre to pre-emption. Sec. 13 authorized the appointment of a Register and Receiver for each of the Territories of Kansas and Nebraska.

Act No. 143 of July 27th, 1854, (10 Stat., 313), provided for the adjustment of the titles to certain lands in Indiana. Sec. 1 empowered the Register and Receiver at Vincennes with another person to be appointed to act as a Board of Commissioners. Sec. 8 allowed the person appointed a Commissioner a compensation of $8 per day; and for the services of the Register and Receiver, UNDER this Act, the Commissioner of the General Land Office was authorized to allow them such compensation as he should deem just and proper.

Act No. 144, of August 3d, 1854, (10 Stat., 347,) revived Act No. 77 of 1823, and Act No. 86 of 1824, relative to the Rio Hondo land claims in Louisiana. Sec. 2 allowed the Register and Receiver of Natchitoches $50 to each "as full compensation" for their duties UNDER this Act.

The Land Officers who carried out the two preceding Acts, Nos. 143 and 144, for which they were each given a special compensation, were also entitled to the regular Salary of $500 per year, and to 1 per cent. Commissions on purchase-moneys derived from the sale of lands under Act No. 58, of 1818; and to compensation for depositing public moneys, under Act No. 91 of 1826, and to pre-emption Fees under Act No. 117 of 1841, which were NOT then even claimed as public moneys; and to the Military Bounty Land Warrant Fees under Sec. 2 of Act No. 133 of 1852, which Fees in 1854 had not been ordered to be paid into the Treasury. These Acts show the various modes by which Congress compensated Land Officers for their regular duties, and for extra services imposed upon them by law.

An Act of August 4th, 1854, (10 Stat., 574,) to graduate and reduce the price of public lands to actual settlers and cultivators, in Sec. 1 it was provided that lands which had been in market for ten years or upwards, should be SOLD for $1 an Acre; if in market for fifteen years or upwards, at 75 cents an Acre; if in market for twenty years or upwards, at 50 cents an Acre; if in market for twenty-five years or upwards, at 25 cents an Acre; if in market for thirty years or upwards, at 12 1–2 cents an Acre.

The purchaser of 160 Acres of land sold at 12 1-2 cents an Acre, paid $20; the percentage or Commissions on this sum, was 20 cents to each Officer, whilst the labor of making the entry, &c., was the same as if the land had sold for $1.25 an Acre, or for $200, the percentage on which to each Land Officer would have been $2. This injustice to those Officers, Congress at the next session, corrected by the following:

No. 147.—An Act (approved March 3, 1855), to increase

the compensation of the Registers of Land Offices, and Receivers of Public Moneys, under the Act entitled "An Act to graduate and reduce the price of the Public Lands to actual settlers and cultivators, approved August 4, 1854. (10 Stat., 635.) Be it enacted, etc., That each Register of a Land Office and Receiver of Public Moneys shall receive the same amount of pay for each and every entry of land made under the Act entitled "An Act to graduate and reduce the price of the public lands to actual settlers and cultivators, approved August 4, 1854," as such officer is by law entitled to receive for similar entries of land, at the minimum price of $1.25 per acre: *Provided*, that the whole amount received per year shall in no case exceed the limitation fixed by existing law.

This increased compensation was by percentage or Commissions on purchase-moneys, received from the sale of the graduated lands. This Act entitled each Officer to the same amount of Commissions as if the land had been sold at $1.25 an Acre, which gave to each Officer $2 Commissions, out of the Treasury, on each 160 Acre tract sold, and in the same proportion for the sale of a less number of Acres. This Act gave 1 per cent. Commissions on the purchase-moneys derived from the sale of the graduated lands, estimating each Acre at $1.25, to fix the amount of the percentage on all of the purchase-moneys received; but as Congress, in 1818, adopted the policy of limiting the Commissions to $2,500 per year, and as the limiting proviso of the Commission Act No. 58, of April 20th, 1818, did NOT in the opinion of Congress, extend to the increased amount of percentage given by this Act, No. 147, of 1855, it appended a proviso, that the amount of Commissions allowed by Act No. 58, of 1818, and the amount of increased Commissions allowed by this Act No. 147, should not in all exceed $2,500 per year, and thereby Congress for the third time, since 1818, expressed its legislative will, that the limiting proviso of the Commission Act No. 58, of 1818, should NOT be extended by construction, to any Act giving additional compensation, by Commissions, or Fees or emoluments of any

kind, to District Land Officers. The Interior Department in January, 1861, refused to carry out the Official opinion of Attorney General Stanton, as to the legal mode of settling the various Accounts of the Defendant in error, and referred to this Act No. 147, of 1855, to sustain its action, and assumed that Act No. 147 made Military Bounty Land Warrant Fees public moneys, which shows the very great weakness and desperate nature of the cause of the Plaintiff in error. In fact it shows conclusively that he has NO law that entitles him to any standing in Court, as a Plaintiff in error, in this cause.

A very few words of explanation will show that Act No. 147 did not in any way relate to the location of Military Bounty Land Warrants on "BOUNTY LAND," or to any compensation paid by Warrant holders, allowed by law to Land Officers for their services in locating those Warrants. Had Warrants been located on graduated lands, Sec. 2 of Act No. 133 of 1852, authorized the Land Officers "SEVERALLY" to charge and receive from Warrant holders a Fee of 1 & 1-4 cent an Acre on each and every Acre located by those Warrants; therefore, it would not have been necessary to pass Act No. 147. This Act, No. 147, it is obvious was intended to regulate the increased compensation allowed by it, as percentage or Commissions on purchase-moneys derived from the sale of lands.

Act No. 149, the next in order, will throw more light on this subject, as it is a qualifying Act; it is as follows:—

No. 149.—An Act (March 3d, 1855), in addition to certain Acts, granting BOUNTY LAND, to certain Officers, musicians, and soldiers, who have been engaged in the Military service of the United States. (10 Stat., 701.)

The 1st Sec. authorized an issue of 120 Acre Warrants to those who had received only 40 Acre Warrants; and 80 Acre Warrants to those who had received Warrants for only 80 Acres of land.

The 6th Sec. of this Act, which authorized Land Officers, "SEVERALLY" to charge Warrant holders Fees

for locating, for them, their Warrants on the "BOUNTY LAND," is as follows:

Sec. 6. That the Registers and Receivers of the several land offices shall be, severally, authorized to charge and receive for their services, in locating all Warrants under the provisions of this Act, the same compensation or percentage to which they are entitled by law, for sales of public lands for cash at the rate of $1.25 per acre; the said compensation to be paid by the assignees or holders of such Warrants.

Nothing could be more explicit than this 6th Sec. of Act No. 149. It authorized the Land Officers "SEVERALLY" to charge Warrant holders the same rate of compensation as the percentage which those Officers were entitled to by law for the sales of public lands for cash, at the rate of $1.25 per Acre, which was 1 per cent. on the purchase-moneys received from the lands SOLD. This fixed the Fee to be paid by Warrant holders at 1 & 1-4 cent an Acre for each and every Acre of "BOUNTY LAND" located by Military Bounty Land Warrants. It did NOT require those Officers to charge Warrant holders any Fees; it merely authorized them "SEVERALLY" to do so, if either or both of them saw proper to make the charge. It strictly provided that each Officer should receive or collect his own Fees; neither could lawfully charge and receive or collect any Fees belonging to the other; and the location of a Warrant was as valid without any charge for or payment of Fees as with it; as was DECIDED by the Secretary of the Interior on July 17th, 1852, in the case of DOWNS; nor were the Land Officers required by this, or any other Act, to account for or to pay any of those Fees into the Treasury of the U. S, which is conclusive on the subject, that Military Bounty Land Warrant Fees were Not intended by Congress for revenue purposes, nor any part of them; which is in strict accordance with the legislation of Congress on this subject from the origin of the land system, in 1796, to 1855. We have shown that Congress, by Act No. 1, of 1796 (1 Stat., 464), provided for sales of

the public lands to the highest bidder, who was also required to pay certain Surveying Fees, which, by Sec. 11, the Receivers thereof were required to account for. Act No. 2, of 1800 (2 Stat., 73), in Sec. 5, fixed the minimum price of the public lands at $2 an Acre, together with certain Fees, for Surveying expenses, and, by Sec. 14, certain other Fees for the expense of issuing Patents, to be paid by land purchasers. The purchase-moneys, and those Surveying and Patent Fees, Sec. 6 required the Receivers thereof to account for and pay over to the Treasurer of the U. S. Sec. 12, of this Act, authorized the Registers of lands to receive for their own use certain Fees from private parties who applied for lands, &c., which Fees were NOT made accountable to the Treasurer of the U. S. Act No. 3, of 1801 (2 Stat., 112), by Sec. 3, required claimants to lands to pay to the Receiver of Public Moneys certain Fees to his own use, which he was NOT required to account for or pay over to the Treasurer of the U. S., either in whole or in part. Sec. 6 fixed the rate of the Fees to be paid to this Officer. Sec. 5 required claimants to lands to pay to the Register of lands certain Fees, which he was NOT required to account for. Sec. 6 required land claimants to pay to the Receiver of Public Moneys and two other persons, who acted with him as a Board of Commissioners, "JOINTLY," certain Fees, which they were NOT required to account for, and, of course, they were allowed for the use of those Commissioners, to be DIVIDED between them. Sec. 9, of this Act, provided that the Fees and Emoluments of the Registers and Receivers, as far as consistent, should be the same as provided for by Sec. 12 of Act No. 2 of 1800.

Act No. 5 of May 26th, 1804, (2 Stat., 277,) continued the system of Fees to District Land Officers, for their own use; but Sec. 13, prohibited any charge for Surveying Fees, as a part of the price of the public lands, from and after July 1st, 1804; Sec. 14 prohibited any charge for Patent Fees, as a part of the price of the public lands, from and after April 1st, 1804; from which time until March 3d, 1855, we have shown that Land Officers did not receive any

Fees, which they were required to account for, or pay into the Treasury of the U. S., either in whole or in part; and that from and after July 1st, 1804, the only moneys which which Receivers of Public Moneys were required to account for, were the purchase-moneys, received from the sale of lands; thus proving indisputably that NO Fees paid to the Defendant in error, by private parties or Warrant holders, for whom he located Military Bounty Land Warrants, can be claimed as public moneys, or for revenue purposes; unless an act of Congress can be found, enacted previous to, or during the term of the Defendant in error, which required him to account for, and pay those Fees in whole or in part into the Treasury of the U. S. More proof of this fact will be produced before we conclude our argument.

Act No. 149 bears even date with Act No. 147, which gave an increased rate of Commissions on the purchase-moneys derived from the sale of graduated lands; which "purchase-moneys," by Act No. 2, of 1800, were made accountable to, and payable to the Treasurer of the U. S.; whilst Act No. 149 neither required the Fees allowed by it to be accounted for, nor paid into the Treasury either in whole or in part, nor was the amount of them in any way limited, which Land Officers might receive per year, from Warrant holders; who paid those Fees for services rendered them.

We have shown that the location of assignable Warrants, which were mainly bought up by land speculators, was vastly more laborious than the work required to make the entries of lands SOLD, which fact, in part, shows why Congress allowed Land Officers to retain ALL of the Military Bounty Land Warrant Fees which they earned by their laborious services to the Warrant holders who paid those Fees.

In Act No. 147 of March 3d, 1855, and in Act No. 149 of March 3d, 1855, we have the uniform and clear distinction made by Congress from 1818 to 1855, between compensation paid to District Land Officers OUT of the Treasury of the U. S., which was invariably limited in

amount; and the compensation allowed them by Fees which they were authorized, "SEVERALLY" or "EACH," but never required to charge and receive from private parties, or third persons, for services rendered them, which Fees were as invariably from 1800 to 1855, UNLIMITED in amount, which those Officers were permitted to receive and retain per year, because they were NOT in a single instance required to account for them, or pay them, or any part of them, into the Treasury of the U. S., as the compensation paid to them OUT of the Treasury was limited in amount from 1818 to 1855. Act No. 149 clearly qualified Act No. 133 of March 22d, 1852, and very clearly shows that Congress did NOT intend the 2d proviso of Sec. 3, of Act No. 133 of 1852, as an "independent proposition" to be applied by construction to Sec. 2 of Act No. 133 of 1852.

We will now show that the General Land Office made a desperate effort to induce Congress, in 1855, to require District Land Officers to account for the Military Bounty Land Warrant Fees, and to pay a part of them into the Treasury, which Congress would NOT do, as is shown by Act No. 149.

On April 2d, 1852, a Circular of the General Land Office was issued, relative to the assignment, &c., of Military Bounty Land Warrants, which will be found on page 82 of the Digest, &c. It required each Receiver of Public Moneys, "to charge himself" in his quarterly Accounts, "with the amount of Fees received" by the Register and himself, "and credit himself with the percentage, to which both are entitled, for FEES and sales; not exceeding $2,500 to each per annum, the amount OF PERCENTAGE allowed by law;" but good care was taken NOT to order any of those Fees to be paid into the Treasury.

Here it is important to observe, that the limiting proviso of the Commission Act No. 58 of April 20th, 1818, and NOT the 2d proviso of the 3d Sec. of Act No. 133 of March 22d, 1852, was referred to as the authority for this claim.

On September 14th, 1852, a General Land Office Circular was issued, to be found on page 84 of the Digest, &c., which calls attention to the order given to Receivers of Public Moneys on April 2d, 1852, relative to the limitation of Fees for locating Military Bounty Land Warrants on "BOUNTY LAND," and the Commissions on purchase-moneys, derived from the SALE of lands to $2,500 per year in all, which the General Land Office desired Congress to order, and which Circular directed as follows: "Receivers will make the CREDITS and CHARGES in their quarterly Accounts as DISBURSING AGENTS, but will make NO DEPOSIT, of any excess over the maximum allowed by law, UNLESS SPECIALLY DIRECTED so to do."

Had any part of Act No. 133, of 1852, required any of the Military Bounty Land Warrant Fees to be paid into the Treasury, or if the limiting proviso of Act No. 58, of 1818, had in any way applied to those Fees, why were Receivers of Public Moneys ordered NOT to pay any of them into the Treasury? Obviously, because the General Land Office knew that Congress, by Act No. 133, of 1852, had NOT required any part of those Fees to be accounted for or paid into the Treasury, and that they were NOT Public Moneys: but this Circular shows that the General Land Office intended to importune Congress to pass an Act to make those Fees accountable to the Treasury.

Here the matter rested for over two years, or until May 3d, 1855, after the passage of the Military Bounty Land Warrant Act, No. 149, of March 3d, 1855, when the General Land Office, having failed to induce Congress to make those Fees accountable to the Treasury, it issued a Circular to Registers and Receivers, dated May 3d, 1855, to be found on page 99 of the Digest, &c., mainly relating to the form of the assignment and transfer of those Warrants. This Circular merely informed those Officers of the authority given them "SEVERALLY," by Sec. 6, of Act No. 149, of March 3d, 1855, to charge Warrant holders certain Fees for locating Warrants for them, and it notified them that any charge for Fees must be made and paid at

the time of the location of the Warrant. This Circular tacitly admitted the right of the Land Officers to the Military Bounty Land Warrant Fees, received by them under the 2d Sec. of Act No. 133, of 1852, and under the 6th Sec. of Act No. 149, of March 3d, 1855.

The refusal of Congress in March, 1855, to make Land Officers account for the Military Bounty Land Warrant Fees, or to pay any part of them into the Treasury of the U. S., put an end to any claim to those Fees, until January 26th, 1865, when the Commissioner of the General Land Office informed District Land Officers, in a Circular of that date, to be found on page 101 of the Digest, &c., that the Department had decided that those Officers were entitled to no greater compensation for their services, in any one official year, "than $500 as Salary, and $2,500 as Commissions;" and that any sum received as fees for locating Military Bounty Land Warrants, "over and above the amount sufficient to entitle them to the maximum of Commissions on purchase-moneys for all services incident to their offices, they were required to deposit to the credit of the Treasurer of the U. S.

We have shown that no law authorized such a decision. That Circular admitted that Act No. 58, of 1818, entitled District Land Officers to $2,500 per year for Commissions on purchase-moneys received from the SALE of lands; and we have shown, that the 2d proviso of the 3d Sec. of Act No. 133, of 1852, allowed District Land Officers to retain the $2,500 Commissions they had received per year, during any year, from 1847, to March 22d, 1852, and in addition thereto, it allowed them to retain all of the Military Bounty Land Warrant Fees they received from Warrant holders from 1848, to March 22d, 1852; but it did not allow such Land Officers as had received $2,500 per year in Commissions on purchase-moneys, "during any year," from 1847, to March 22d, 1852, any additional compensation out of the Treasury, under the 3d Sec. of that Act. We will further prove that the Department knew that the decision of January, 1856, was grossly illegal.

The next circular in order, on this subject, is a very remarkable one in many respects; it is dated April 21st, 1856, and may be seen on pages 101–103 of the Digest, &c. It Says: "In justice to Receivers, whose duty it is made, to account for all FEES received BY THE REGISTER, as well as those received by themselves," &c. This was a bold invasion of the legislative power of Congress; and a remarkable contempt of the legislative will of Congress, so clearly and repeatedly expressed on this subject. The only moneys which the law authorized and required a Receiver of Public Moneys to Receipt for, were the purchase-moneys received by him from the sale of lands, which moneys were to be Receipted for in duplicate, the original Receipt was to be delivered by the Receiver to the Register, whose duty it was made, by the 2d Sec. of Act No 58, of 1818, to file and enter and to transmit an account of to the Secretary of the Treasury.

The only Act which required the Defendant in error to account for any moneys, was the 6th Sec. of Act No. 2, of May 10th, 1800 (2 Stat., 75), which required him to account for the "purchase-moneys," received from the SALE of lands, to the Secretary of the Treasury; and to transmit them to the Treasurer of the U. S. The Act of March 3d, 1849 (9 Stat., 398), required the GROSS amount of all moneys, made accountable to the Treasury, or for the use of the United States, to be paid into the Treasury of the U. S. without any abatement or deduction on any account whatever.

This Circular of April 21st, 1865, then directed as follows: "Whenever application is made to locate a Land Warrant, the Register's and Receiver's FEES are to be paid into the hands of the Receiver," &c. Sec. 2, of Act No. 133, of March 22d, 1852, and Sec. 6, of Act No. 149, of March 3d, 1855, which qualifies Sec. 2, of Act No. 133, say: "The Registers and Receivers * * shall be SEVERALLY authorized to charge and receive for their services," &c. These Acts did NOT REQUIRE them to charge any Fees; they were merely authorized to do so, if they saw proper;

nor did any Act require any Fees received by either of them to be accounted for; nor can any Act be found which required the Defendant in error to pay over any Fees to the Treasurer of the U. S., therefore the gross illegality of this order is apparent.

This Circular further ordered the Receiver, as Disbursing Agent, at the end of each quarter to Credit the U. S. in his DISBURSING ACCOUNT, with the full amount of Military Bounty Land Warrant Fees "received on account of the Register and Receiver during the quarter," to be transmitted quarterly to the General Land Office.

To further show the contempt of the General Land Office, in 1856, for what it knew to be positive law, we call attention to the Circular of that Office of June 13th, 1849, addressed to Receivers of Public Moneys, directing them how to keep their Accounts of public moneys received and disbursed; and what moneys to deposit in the Treasury, in accordance with the Act of March 3d, 1849; that Circular, put in evidence, is as follows:

"Sir: 1st.—Under the provisions of the 1st Sec. of this Act, you will, from and after the 30th instant, deposit all moneys received from the SALE of public lands from time to time." * *

"2d. After the 30th instant NO payments of any description whatever, except Treasury Drafts, are to be made OUT OF THIS FUND." * *

"8th. You will hereafter keep TWO quarterly Account Books; entering in ONE your ordinary accounts as Receiver, and in the OTHER those as Disbursing Agent, under the provisions of the Act referred to."

The Foregoing Circular shows that the General Land Office knew on June 13th, 1849, that only moneys which had been made accountable to, and payable into the Treasury, could be entered in a Receiving Account of Public Moneys; and that NO moneys could be lawfully received into the Treasury without the express authority or requirement of law; and as there was NOT any law in 1856, which

made the Military Bounty Land Warrant or any other Fees accountable to or payable into the Treasury, the order requiring those Fees to be accounted for and credited to the U. S., in the Disbursing Account of Public Moneys disbursed, was erroneous and illegal. The Circular of June 13th, 1849, to carry out the Act of March 3d, 1849, very properly required only the purchase-moneys received from the sale of lands to be deposited with the Treasurer of the U. S. In 1849 District Land Officers received Military Bounty Land Warrant Fees under Act No. 126 of May 17th, 1848, and pre-emption Fees under Act No. 117 of September 4th, 1841; which those Officers were NOT by any Act of Congress required to account for, or to deposit any portion of them with the Treasurer of the U. S.; nor was any portion of them ever claimed by the "Department," as public moneys, previous to or during the term of the Defendant in error.

The concluding paragraph of the remarkable Circular of April 21st, 1856, is the most important part of it; it says as follows: "Whenever the amount of FEES received by the Receiver, added to the COMMISSIONS, to which the Register and Receiver are entitled, on account of land SOLD, shall reach the maximum of $2,500, allowed by law, it is the duty of the Receiver promptly to report the fact to this Office; and the excess of FEES received by him, over and above an amount sufficient to make the Register's and Receiver's maximum, for their Official year, respectively, HE WILL KEEP IN HIS POSSESSION, until he is instructed in regard to the same."

This order of the Commissioner to the Receiver, NOT to deposit any of those Military Bounty Land Warrant Fees in the Treasury until further instructed, is indisputable evidence that the Commissioner knew that the claim to them was illegal; that they were NOT public moneys; and that Congress intended them for the use of the Land Officers. This order was issued more than FOUR years after Act No. 133, of 1852, was passed; and more than a year after Act No. 149, of 1855, was passed, which are

important facts, and here the matter rested for over a year more; but as Congress did NOT, either in 1856 or in 1857, make those Fees accountable to the Treasury, or require them to be deposited in the Treasury; and as the Military Bounty Land Warrant Fees could NOT be gotten into the Treasury by being credited to the United States in a Disbursing Account; and as Congress could NOT be induced to depart from its long established policy of compensating District Land Officers in part by Fees paid to them by private parties, or third persons, for the use of those Officers, the Commissioner of the General Land Office, on the 27th of April, 1857, concluded to do what Congress could NOT be induced to do; and on that day issued another remarkable Circular Order, to be found on pages 105 & 106 of the Digest, &c. We will also prove that the Interior Department knew this order to be grossly illegal.

The Circular order of 1857 says, that the 1st Comptroller had decided that Military Bounty Land Warrant Fees must be accounted for in the Receiving Account of Public Moneys, and not in the Disbursing Account. That was the only way in which those Fees could be gotten into the Treasury. It was not issued until over Five years after Act No. 133, of March 22d, 1852, was passed, and not until more than Two years after Act No. 149, of March 3d, 1855, was passed. It contains three important and remarkable illegal Orders, which will be examined in their order.

In January, 1861, the 1st Comptroller admitted that those Military Bounty Land Warrant Fees were NOT Public Moneys; and in writing, he requested the Commissioner of the General Land Office to cause a statement of the Accounts of the Defendant in error to be made, with an allowance of his charge for those Fees deposited, and to transmit the statements of his Accounts to the 1st Comptroller's Office; his letter is as follows:

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE,
January 18, 1861.

J. S. Wilson, Esq., Commissioner of the General Land Office:

SIR: Enclosed please find the opinion of the Attorney

General upon the various suspended and disallowed items involved in the account of Wm. Brindle, Receiver at Lecompton, K T.

You are respectfully requested to cause a statement of said accounts to be made and transmitted to this office in accordance therewith.

Respectfully, your obedient servant,
W. MEDILL, Comptroller.

The Interior Department refused to carry out the opinion of Atty. Gen. Stanton, referred to in the letter of the 1st Comptroller. It was delivered on January 17th, 1861, at the request of the Secretary of the Treasury, as to the legal mode of settling the Receiving And Disbursing Accounts of the Defendant in error as Receiver of Public Moneys in the Pawnee Land District from 1857 to 1861. It was put in evidence, and may be seen on page 169 to 171 of the Digest, &c.; and also his reasons, in reply to the Objections of the Secty. of the Interior for maintaining the opinion; "That the Fees on moneys received by the Registers and Receivers for locating Military Bounty Land Warrants, for private parties, are NOT subject to a limitation of a certain aggregate per annum;" also put in evidence, which may be seen on pages 179 to 182 of the Digest, &c.

The Circular of April 27th, 1857, was not issued until over FIVE years after Act No. 133, of March 22d, 1852, was passed, and not until more than TWO years after Act No. 149, of March 3d, 1855, was passed, which we will now examine:

1st.—That the Receiver was ordered to demand from Warrant holders the Fees which the law authorized the Register only to charge and receive, or not charge, as he saw proper; and to account, monthly and quarterly, in his Receiving Account of Public moneys, for "ALL FEES" which the Register and Receiver were SEVERALLY authorized by law to charge and receive from Warrant holders for locating their Warrants on "BOUNTY LANDS."

No law can be found which authorized or required the

Receiver of Public Moneys to demand from "Warrant holders," the Fees which the law only authorized the Register to charge and receive, as he saw proper. No law can be found enacted previous to, or during the term of the Defendant in error, from 1857 to 1861, which required him as Receiver of Public Moneys in a District Land Office, to account to the Secty. of the Treasury for any Military Bounty Land Warrant Fees, or Fees of any kind; or to deposit with, or pay over to the Treasurer of the U. S. Fees of any kind; or to account for and pay over any moneys but purchase-moneys received by him from the SALE of lands, which was the only item of CREDIT which could lawfully enter into the receiving Account of the Defendant in error.

2d.—The Receiver was ordered to charge the U. S. in his quarterly Disbursing Account of public moneys, with "the amount of Commissions on the value of land located with Warrants," to which the Register and Receiver may be entitled: which added to the "Commissions on lands SOLD," were not to exceed in the aggregate the maximum of $2,500 Commissions for any Official year, "from the date of their respective Commissions."

Atty. Gen. Stanton, in his Certified opinion of January, 17th, 1861, said: "The Warrant is NOT money, and its location is NOT a Sale." The land upon which Military Bounty Land Warrants were located was "BOUNTY land," valued at $1.25 an Acre, as the minimum price; they could not be located on lands valued at the "double" minimum price of $2.50 an Acre, without the difference being paid for in money. In the order of 1857 to the Receiver to pay over quarterly, to the Register a portion of those Fees, and charge the U. S., the Commissioner of the General Land Office denominated them as "Commissions on the value of lands located with Warrants," which was an absurdity, as it did NOT accomplish his purpose; it did NOT make the Military Bounty Land Warrant Fees public moneys; nor did it bring them within the limit of the limiting proviso of

the Commission Act, No. 58, of 1818. But when he absurdly so designated those Fees, Commissions, to get them into the Treasury, and undertook to limit them, and the Commissions on purchase-moneys, from the SALE of lands to $2,500 per year, in all, to each Officer, he showed, that he based his order on the Commission Act, No. 58, of 1818, and its limiting proviso, which we have shown, could NOT be extended by construction to any other Act, giving compensation of any kind to Land Officers, enacted after Act No. 92, of May 22d, 1826. (3 Stat., 193.)

The Auditing Division of the General Land Office did NOT presume to extend the limiting proviso of the Commission Act No. 58 of 1818, to the compensation for depositing public moneys, allowed by Act No. 91 of May 22d, 1826, (3 Stat., 193); which was always admitted to be in addition to Salary and Commissions, &c., as the Accounts of the Defendant in error put in evidence show.

Congress by Act. No. 92 of May 22d, 1826, (3 Stat., 193,) gave Fees, Clerk-hire, and additional or increased Commissions on purchase-money, which the limiting proviso of the Commission Act No. 58, of 1818, did NOT limit the amount of; or Congress would NOT have appended a proviso to Act No. 92, in order to limit the increased Commissions given by Act No. 92, and the Salary and Commissions given by Act No. 58, of 1818, to $3,000 per year, in all. The compensation for Clerk-hire actually paid, was to be "IN addition to the Fees," allowed by Act No. 92 of 1826; and neither the compensation by Fees, nor for Clerk-hire, was limited by the limiting proviso of Act No. 58 of 1818, nor by the proviso of Act No. 92 of 1826, limiting the increased Commissions allowed by it. The compensation by Fees and by Clerk-hire were excluded from those limiting provisoes; by which Congress very clearly expressed its legislative will, that the limiting proviso of the Commission Act No. 58, of April 20th, 1818, should NOT be extended by construction to any other Act, giving additional compensation of any kind.

The 3d Sec. of the Military Bounty Land Warrant Act No. 133, of March 22d, 1852, and the 2d proviso of that Sec. could NOT have been taken to base those orders upon, as no one can, with a shadow of reason, assert that the 3d Sec. of this Act or its 2d proviso required any Fees or moneys of any kind, to be accounted for to the Secty. of the Treasury, and to be paid over to or deposited with the Treasurer of the U. S., either in whole or in part; without which requirement of Congress NO FEES or moneys of any kind can be claimed as public moneys. Moreover, the 3d Sec. and its 2d proviso of Act No. 133, of 1852, allowed each Register and Receiver, who had served from 1847 to March 22d, 1852, to retain the $2,500 Commissions on purchase-moneys, which each of them may have received out of the Treasury per year, under the provisions of Act No. 58, of 1818; and in addition thereto, the 3d Sec. of Act No. 133, and its 2d proviso, allowed each of those Officers to retain ALL of the Military Bounty Land Warrant Fees, paid to them by Warrant holders per year, under the Military Bounty Land Warrant Fee Act, No. 126, of 1848 (9 Stat., 231); but it prohibited those Land Officers from receiving or being paid any additional compensation out of the Treasury of the U. S., "during any year" from 1847 to 1852; the period of time covered by that SECTION 3 and its proviso No. 2, of Act No. 133, of March 22d, 1852. These facts prove that the 2d proviso of Sec. 3, of Act No. 133, of 1852, applied only to that Sec.; and the 6th Sec. of Act No. 149, of 1855, which qualified Act No. 133, of 1852, also proves that the 2d proviso of Sec. 3, of Act No. 133, of 1852, was intended by Congress to be strictly construed, and confined in its operation to the Section in which it is found; it is NOT within either the words or the reason of the 2d Section of Act No. 133, of 1852, and to apply it to that Sec., would reverse the entire policy of Congress from 1800 to 1855, on the subject of Fees to District Land Officers, paid to them by third persons, for services rendered to those persons.

It will be observed that the Commissioner in 1857 ordered the Official year of District Land Officers to be cal-

culated from the date of their Commissions; whereas Act No. 146, of February 24th, 1855, (10 Stat., 615,) required "the Salaries of all Land Officers to commence only from the time they enter on the discharge of their duties." This fixed the date of an Official year in the case of every Land Officer to 1859; and it is immaterial whether the General Land Office was or was not ignorant of the law on this subject, or whether it desired to show its contempt of Congress and its determination to usurp the power of Congress to make laws; as the order of the General Land Office in 1857, that the Official year of District Land Officers should commence with the date of their Commissions, proves that no Court of law can look to the orders of that Office issued from 1852 to 1857 for a correct view of the laws of Congress to compensate those Officers.

3d. The Receiver was ordered by the Circular of April 27th, 1857, to forward to the General Land Office, "in all cases," with his Quarterly Disbursing Account, "Separate and DISTINCT Vouchers for the amount of Commissions paid to the Register, on purchase-money, for lands SOLD, and on the value of lands located with Warrants."

District Land Officers did NOT receive, nor could they receive from Warrant holders, or from any source, any "Commissions or percentage on the value of lands located with Warrants:" because all public lands valued at $1.25 an Acre, upon which Military Bounty Land Warrants were located, was "BOUNTY LAND" donated to soldiers for their services; and as NO moneys were paid by Warrant holders for those lands, located with Warrants, the Land Officers could NOT receive any percentage or "Commissions per cent." for that service rendered to Warrant holders; consequently the designation of "Commissions on the value of lands located with Warrants" was an absurdity, which could NOT accomplish the purpose intended, except in one way; the law did not authorize, require, or permit the Defendant in error, as Receiver of Public Moneys, to pay out or disburse any moneys, except what was expressly

permitted by law; nor could he lawfully charge the U. S. in his Disbursing Account with any payments made by him, which were not expenditures authorized by law; and as Commissions paid to the Register, on purchase-moneys, received from the SALE of lands, was an authorized expenditure, to get any Military Bounty Land Warrant Fees charged to the Register and Receiver in the Disbursing Account of Public Moneys, would diminish the amount of Commissions on purchase-moneys, from lands sold, payable to them per year, under the provisions of Act No. 58, of 1818, it was doubtless deemed a cute trick to denominate those Fees as "Commissions on the value of lands located with Warrants;" but the General Land Office before it got done adjusting the Accounts of the Defendant in error, was compelled to admit and assert that those Fees were NOT in any way, or in any sense of the word, Commissions on moneys; that no matter how UNLAWFULLY Military Bounty Land Warrant Fees had been gotten into the Treasury, they could NOT be refunded or paid out of the moneys appropriated by Congress to pay Commissions on purchase-moneys, as will be shown.

The Defendant in error obeyed the illegal order of April 27th, 1857, by crediting the U. S. in his Monthly and Quarterly Receiving Accounts, with the FEES received from Warrant holders; and in his Quarterly Disbursing Accounts he charged the U. S. with the FEES received from Warrant holders which the order of 1857 permitted the Receiver TO PAY to the Register of lands, accompanied by his Receipt for those FEES. In NO Account did the Defendant in error denominate those FEES, as "Commissions on the value of lands located with Warrants," as the Accounts put in evidence show; and in his Disbursing Account for the Fourth Quarter of 1860 he charged the U. S. with the amount of Military Bounty Land Warrant FEES belonging to him, which he had been illegally compelled to account for, and pay into the Treasury of the U. S.

Before calling attention to the adjustment of the Disbursing Account of the Defendant in error for the Fourth

Quarter of 1860, we will prove that the Secty. of the Interior knew that the Military Bounty Land Warrant FEES were NOT public moneys, but that they were intended by Congress for the use of the District Land Officers.

On the 7th of September, 1858, Governor Lowe of Iowa, claimed, as due to that State, 5 per cent. of the net proceeds of the Military Bounty Land Warrant Fees, which had been paid into the Treasury of the U. S., under the peremptory order of April 27th, 1857. The following is the remarkable reply of the Secty. of the Interior to the demand of Gov. R. P. Lowe:

DEPARTMENT OF THE INTERIOR,

September 20th, 1858.

R. P. LOWE,

Governor of the State of Iowa, Des Moines, Iowa.

SIR: In reply to your letter of the 7th instant, in relation to an application for an allowance of five per centum, claimed to be due the State of Iowa, on Military Land Warrant locations, I have the honor to state that *in my opinion* the Act of 1847, to which you refer, *is a bounty land Act*, and that no distinction can properly be made between locations made under it *and those made under other bounty land laws*. The location of warrants issued under the Act of 1847 *is not considered as constituting a sale* of the public lands as contemplated by the Act admitting Iowa into the Union.

That Act appropriated five per cent. of the net proceeds of sales of all public lands, for making public roads and canals within the State. *There being no net proceeds accruing from locations by Military Land Warrants*, the allowance of five per centum on such locations cannot be regarded *as having been appropriated or provided for by law.*

Very Respectfully, Your Obedient Servant,

J. THOMPSON, Secretary.

Here we have the admission of the Secty. of the Interior, who ordered the General Land Office to issue that Circular order of April 27th, 1857, that Military Bounty

Land Warrants were NOT money, and that their location on lands were NOT SALES of lands; and his assertion in 1858, that NO "NET PROCEEDS" accrued to the U. S. from their locations.

Those Fees not having been paid by Warrant holders as purchase-moneys, but as a compensation to the Land Officers for locating their Military Bounty Land Warrants, on "BOUNTY LAND," which those Officers were NOT by any law required to account for, or to pay any portion of them over the Treasurer, they were NOT public moneys; and were, therefore, illegally in the Treasury of the U. S.; and consequently, the assertion of the Secty. of the Interior in 1858, was true: that there were NO "NET PROCEEDS" from the location of those Warrants.

The fact, that the Circular order of April 27th, 1857, was not issued for more than FIVE years after Act No. 153, of March 22d, 1852, was passed, and for over TWO years after Act No. 149, of March 3d, 1855, was enacted, is conclusive proof, that the Interior Department knew in 1857, as well as in 1858, that Congress did NOT intend those Military Bounty Land Warrant Fees for the use of the U. S., or as public moneys; and that the order of 1857 was intended to illegally and unjustly deprive the Defendant in error of moneys, to which the Treasury of the U. S. had NO legal or just claim; in order to increase the public revenues, and prevent the protective Tariff advocates from demanding a revision of the Tariff of 1846.

We have called attention to the letter of the 1st Comptroller of January 18th, 1861, in which he requested the Commissioner of the General Land Office to cause a statement of the Accounts of the Defendant in error to be made and transmitted to the Office of the First Comptroller, in accordance with the opinion of Atty. Gen. Stanton, a copy of which the 1st Comptroller had transmitted to the Commissioner. We now call attention to Report No. 16,222, by the General Land Office, dated January 28, 1861, of the adjustment of the Disbursing Account of the Defendant in error, for the 4th Quarter of 1860, in which he charged the

United States with the Military Bounty Land Warrant Fees belonging to him, which he had been compelled to pay into the Treasury of the U. S., under the peremptory order of 1857; which Report, as submitted in evidence, will be found on pages 174 to 177 of the Digest, &c., in which the following will be found:

"Amount debited as Land Warrant Fees paid into the Treasury of the U. S., by peremptory orders of the General Land Office in years 1857, 1858, 1859, and 1860, up to Nov. 1, 1860, due Wm. Brindle for his services in locating the same, disallowed; as the charge is for moneys claimed to have been improperly paid into the Treasury, it is not deemed, if it could be allowed, the subject matter of a charge for commissions, to be paid out of the appropriations for Salary and Commissions, but must be specially appropriated for by Act of Congress."

To get the Military Bounty Land Warrant Fees into the Treasury, they were denominated "Commissions on the value of lands located with Warrants;" and although the Defendant in error uniformly credited the U. S. in his Receiving Accounts with M. B. L. Wt. Fees, and charged the U. S. in his Disbursing Accounts with M. B. L. Wt. Fees paid to the Register, the Auditing Division of the General Land Office, in adjusting the Disbursing Account of the Defendant in error, uniformly, denominated those Fees as "Commissions on the value of lands located with Warrants," as may be seen by examining the Accounts put in evidence; but when the General Land Office came to assign a reason for not stating the Accounts of the Defendant in error, in accordance with the opinion of Atty. Gen. Stanton, as requested by the 1st Comptroller on January 18th, 1861; or for not allowing the charge of the Defendant in error in his Disbursing Account for the 4th Quarter of 1860 for Military Bounty Land Warrant Fees due to him, they were no longer called: "Commissions on the value of lands located with Warrants;" but the General Land Office said: "It is not deemed, if it could be allowed, a charge for Commissions, to be paid out of the Appropriations, for Salary

and Commissions; but must be specially Appropriated for by Act of Congress." This was a clear admission by the General Land Office, that its action in having claimed those Fees was illegal; and that its designation of them as "Commissions," &c., in adjusting the Disbursing Accounts of the Defendent in error, was as illegal as it was absurd.

Report No. 16,222, purports to have been made on January 28th, 1861. By the Certificate of the First Comptroller of the Treasury, as shown on page 175 of the Digest, &c., it did NOT reach him until May 8th, 1861; and in the meantime, the First Comptroller, who, on January 18th, 1861, had requested the Accounts of the Defendant in error to be stated by the General Land Office in accordance with the opinion of Atty. Gen. Stanton, had left that Office, and had been succeeded by a person whose attention had not been called to the law. Not until after May 8th, 1861, did the Defendant in error know how his Disbursing Account for the 4th Quarter of 1860 had been adjusted, and not until in 1876, when he obtained a Certified Copy of his Accounts and of the adjustments of them, did he learn the remarkable reasons assigned for refusing to state or adjust them in accordance with the opinion of Atty. Gen. Stanton, of January 17th, 1861.

The U. S., as Plaintiff in error, is in Court without a particle of law to sustain the allegation that the Courts below erred in the opinion, that the Defendant in error was entitled by law, to ALL of the Military Bounty Land Warrant FEES, and to 1 per cent. Commissions on purchase-moneys not to exceed $2,500 per year, this being the maximum of Commissions on moneys received from lands SOLD, allowed by Act No. 58, of 1818. The remaining laws to be referred to will show this fact most conclusively.

The remarkable steadiness with which Congress adhered to the policy of compensating District Land Officers from 1800 to 1861, in part by means of Fees, which they were authorized to charge and receive from private parties, to an amount per year, limited only by the amount of work done or services rendered for those parties, arose from several causes;

amongst which was the well-known fact that the compensation allowed by the Act of April 20th, 1818, of $500 salary and $2,500 commissions on the purchase-money received from the sale of lands, which, in a district such as the Defendant in error served in, would not pay the necessary office expenses per year. Moreover, one dollar in 1818 had at least twice as much purchasing power as it had in Kansas Territory from 1857 to 1861, or as it had in any of the Western Territories from and after 1826; and as Congress did not increase the compensation paid out of the public moneys or out of the Treasury of the United States, as the price of commodities or the cost of living rose in value, which diminished the purchasing power of the dollar; and as a numerous body of the Representatives in Congress desired to limit as much as possible the revenue derived from the sale of the public lands, without increasing the compensation given to District Officers out of the Treasury, under the provisions of the Act of 1818, therefore, in order to increase the necessity for a high Tariff, to give more protection to the manufacturing industries, this element in Congress favored additional compensation to those Registers and Receivers, by means of Fees to be paid to them, by private parties.

Act No. 92 of May 22d, 1826, (4 Stat., 193,) gave three kinds of compensation, namely: Fees, Clerk-hire, and additional or an increased rate of Commissions on purchase-moneys from the sale of lands. The Clerk-hire was to be in addition so the Fees; and both were to be in addition to the Commissions. The Fees were to be paid by private parties to the Land Officers, who were NOT required to account for them, nor were they limited in amount. The Clerk-hire was to be the amount actually expended for that purpose. The additional Commissions were to be at the rate of 1–2 of 1 per cent on the moneys paid by "relinquishments and discounts;" and as Congress did NOT think that the limiting proviso of the Commission Act No. 58, of 1818, applied to the Commissions allowed by this Act No. 92; and as it was the uniform policy, after 1818, to prevent

any excessive or unusual demand from being made on the Treasury, Congress, to limit the amount of Commissions allowed by this Act, appended a proviso to it, limiting the Commissions allowed by it and by the Salary and Commission Act, No. 58, of 1818, to $3,000 per year in all; but the Clerk-hire was to be paid out of the Treasury, in addition to the $3,000 per year.

Under this Act No. 92, a question arose whether a Land Officer could make any charge for clerical services by a member of his family, to whose assistance he was entitled. The question was submitted to Atty. Gen. Wirt, who on March 20th, 1828, said: "My opinion is, that where the Register or Receiver performs the whole duty himself, his compensation is the Fees, * * and the 1–2 per cent.; * * but that there is no authority to make any extra allowance for Clerk-hire, EXCEPT where there has been an expenditure actually incurred for Clerk-hire by the Register or Receiver. * * When it is remembered that the provision grew out of the fact of the actual expenditure of moneys in Clerk-hire, which those Officers claimed to have reimbursed, there would seem to be no remaining doubt on the subject." * * (Opinions, Vol. 1 of March 3d, 1851, pages 536 and 537.)

From the foregoing facts we learn that as early as 1828 it was understood by the General Land Office and by Atty. Gen. Wirt, that compensation allowed to Land Officers by Fees, Commissions, Salary, &c., was for their personal services, and that Congress did NOT expect them to expend it in the payment of Clerks, whom they were compelled to employ, to aid them in doing the public business.

The Interior Department could not induce Congress to depart from its long established policy of compensating Land Officers, in part, by Fees paid to them by third persons or private parties, for the services and use of those Officers; and as in 1855 a largely increased emigration commenced to the Western States and Territories having public lands for sale, it greatly increased the labors and Office expenses of the District Land Officers; and Congress

intended, by the following Act, that those extraordinary expenses should be refunded to them:

No. 150.—An Act (approved August 18, 1856) making appropriations for certain civil expenses of the Government, for the year ending the 30th June, 1856. (11 Stat. 91.)

Section 7. That in the settlement of the accounts of Registers and Receivers of the public land offices, the Secretary of the Interior be and he is hereby authorized to allow, subject to the approval of Congress, such reasonable compensation for additional clerical services and extraordinary expenses, incident to said offices, as he shall think just and proper, and report to Congress all such cases of allowance at each succeeding session, with the estimates of the sum or sums required to pay the same.

Act No. 2, of May 10th, 1800, (2 Stat., 73,) allowed Clerk-hire only at public sales, and this Act provided for Clerk-hire at private sales; hence the word "additional" in Act No. 150. Congress left it optional with the Secty. of the Interior, in the settlement of the Accounts of Registers and Receivers, to make such allowance for "Clerical services and extraordinary expenses" as he saw proper; and required him to report to Congress annually any allowance which he might make, with a statement "of the sum or sums required to pay the same."

The Secretary of the Interior defeated the purpose of Congress in passing this Act, by refusing to carry it out, on the disingennous plea, that Congress had not made any appropriation to carry it out. Congress by Act No. 150, explicitly required an allowance to be made before any appropriation could be made to pay any sum found to be due under it. The Secretary procured the repeal of this Act on February 19th, 1861, in the appropriation Act to supply deficiencies. (12 Stat., 133.) Congress intended it for the relief of such Land Officers as were subjected to extraordinary expenses, and who could not promptly do the public business without Clerical assistance.

Congress did not intend that Land Officers should

be compelled to expend the compensation given to them from various sources, for their personal services, in the employment of Clerks to aid them in doing the public business. This fact is fully proven by the Acts of Congress from 1800 to 1856. The contest between contending political parties for the lands in the Pawnee Land District; and the conflicting claims which arose to those lands, had to be carefully tried and impartially decided. The preparation of the papers in those contested cases, the written decision in each case, and forwarding the papers in cases of appeal to the General Land Office, together with the ordinary business of the Office of the Defendant in error, subjected him to "extraordinary expenses," requiring much Clerical assistance. The settlers in the Pawnee Land District were not the kind of persons who could be induced to hang around a Land Office, waiting the convenience of a Land Officer to do their business.

In 1860 the Defendant in error found that, after paying his office expenses, he had nothing left out of the compensation which he had been allowed, by the illegal action of the General Land Office, for his long and laborious services on the frontier, when he determined to render an Account for some compensation, under Act No. 150, of 1856. In the 4th Quarter of 1860 he rendered a supplemental Disbursing Account, in which he charged for only one Clerk. On December 27th, 1860, the General Land Office refused to settle the Account, as required by Act No. 150, on the false plea that the charges in it were "not provided for by law, or appropriation;" as may be seen on page 1 of the Appendix to the Digest, &c. But strange as it may appear, when Atty. Gen. Stanton delivered his opinion on January 17th, 1861, that the Military Bounty Land Warrant Fees were allowed by Congress for the use of the Defendant in error, the Secty. of the Interior refused to carry it out; and to combat it, he assumed that Act No. 150, of 1856, was intended to be in lieu of those Fees, although he had refused to carry it out; and on January 26th, 1861, the Interior Department took up the Clerk-hire Account of the Defendant

in error which they had refused to settle in December, 1860, and allowed a part of that Account; and on the same day that Department Reported to Congress the sum allowed for appropriation. Shortly after having made that Report to Congress, the Interior Department induced the President to get the Atty. Gen. to revoke his Certified opinion; but in revoking it, he affirmed the correctness of his opinion, and also his additional reasons, subsequently given in answer to the objection of the Interior Department, for maintaining his opinion of the law as delivered by him. As soon as the General Land Office learned that the Office would be permitted by the President to disregard the opinion of Atty. Gen. Stanton, a Clerk from the Auditing Division of the General Land Office was permitted to go to the Congressional Committee, to which the Report of January 26th, 1861, had been referred, and opposed an appropriation of the sum Reported to be due to the Defendant in error, under Act No. 150, of 1856. The sum admitted on the settlement of January 26th, 1861, to be due to him, and so Certified to Congress in the Report of that date, was not appropriated until June 10th, 1878.

The sum admitted to be due the Defendant in error, under Act No. 150, and appropriated to pay the same, will NOT reimburse him for the expenses he was improperly subjected to in procuring the allowance and appropriation, much less reimburse him for any Office expenses; and now to show upon what the claim to the Military Bounty Land Warrant Fees was based in 1857, and that NO claim was then set up that Act No. 150 was in lieu of those Fees claimed in 1857 as public moneys, we quote the following from the annual Report of the Secty. of the Interior, in December, 1857; he said:

"Under the Bounty Land law of March 3d, 1855, large sums have been received at some of the land offices for the location of warrants, and claims have been presented by several of the officers for the whole amount of Fees collected. The General Land Office has decided and the decision has been sustained by the department, that in view of

the limitation as to the maximum in the Act of April 20th, 1818, and the terms of the 2d and 3d sections of the Act of March 22d, 1852, in connection with the Act of 1855, there is no authority of law for the allowance of any excess over the maximum compensation for commissions as fixed by the said Act of 1818."

Congress in 1826, and repeatedly thereafter, said that the limiting proviso of the Commission Act No. 58, of April 20th, 1818, did NOT apply to additional Commissions or compensation of any kind, given by a subsequent Act; and in doing so, expressed the legislative will of Congress, that the limiting proviso of Act No. 58 should NOT be extended by construction to the Military Bounty Land Warrant Fee Acts. The 3d Sec. of Act No. 133, of March 22d, 1852, and its provisos related only to the years from February 11th, 1847, to March 22d, 1852; it did NOT cover or relate to any time after March 22d, 1852; and it allowed Land Officers, who had received $2,500 Commissions on purchase-moneys "during any year" from 1847 to 1852, and also Military Bounty Land Warrant Fees, under the Fee Act No. 126, of May 17th, 1848, to retain the $2,500 for Commissions, and also all of those Fees; but it prohibited such Officers from being paid any additional compensation out of the Treasury "during any year" from 1848 to 1852; such Officers as had not received by Commissions and Fees $2,500 a year "during any year" from 1847 to 1852, were to be paid out of the Treasury the additional compensation of 1 & 1-4 cent an Acre for every Acre of land located by Military Bounty Land Warrants from 1847 to March 22d, 1852, under the provisions of the 3d Sec. of Act No. 133, of 1852, which additional compensation, when added to the Commissions received under Act No. 58, of 1818, and the Fees received under the Fee Act No. 126, of 1848, were in all not to exceed $2,500 "during any year" from 1848 to 1852, and it might not in any case amount to that sum.

The foregoing facts prove that the reasons assigned by the Secty. of the Interior, in 1857, for the illegal Circular

Order of April 27th, 1857, (Digest, &c., 105,) were erroneous, and that the claim to any of the Military Bounty Land Warrant Fees was illegal; that they were NOT public moneys, during the term of the Defendant in error from 1857 to May 6th, 1861; and that he is entitled by law to ALL of the Fees claimed by him, and in addition thereto, to 1 per cent. Commissions on the purchase-moneys received by him from lands SOLD, not to exceed $2,500 per year for Commissions. He was NOT allowed 1 per cent. Commissions on all of the purchase-moneys received by him from 1857 to 1861, as is shown by paragraph 10 of the Special Verdict. The General Land Office confounded *Fees* with *Commissions*, to get them illegally into the Treasury of the United States; but when it came to the question of refunding them, they saw a very clear and proper distinction between Fees and Commissions.

It will be observed that the Secty. of the Interior did not claim in his report of 1857 that the compensation given by Act No. 150, of 1856, was in lieu of the Military Bounty Land Warrant Fees, and that he said that the General Land Office had decided to claim those Fees, and that he had merely sustained the decision; whereas the Commissioner of the General Land Office, in his Circular of January 26th, 1856, (Digest, &c., p. 101,) said: "I have to state as the decision of the Department." The General Land Office is not a Department, and therefore the Interior Department was meant; but that Circular of 1856 did not order those Fees to be accounted for, or any part of them to be deposited in the Treasury of the U. S.; nor was such an Order issued until in April, 1857, when the Commissioner of the General Land Office said that the First Comptroller of the Treasury had decided that Military Bounty Land Warrant Fees should be accounted for in the Receiving Account of Public Moneys, and not in a Disbursing Account. On the 18th of January, 1861, this same 1st Comptroller admitted that those Fees were NOT public moneys, and requested the Commissioner of the General Land Office to cause the Accounts of the Defendant in error to be stated in accord-

ance with the opinion of Atty. Gen. Stanton, of January 17th, 1861. It is not surprising that neither the Commissioner nor the Secretary wished to be held responsible for usurping the power of ordering those Fees to be accounted for, as it was an illegal and an unjust order, as they well knew.

The following Acts show a steady adherence by Congress to its long established policy of compensating District Land Officers, in part, by Fees paid to them by third persons, and also by extra compensation out of the Treasury, in addition to the compensation of $3,000 per year to which they were entitled under the provisions of the Act No. 58, of 1818.

Act No. 151, of August 18th, 1856, (11 Stat., 140,) continued at Vincennes, Indiana, the powers and duties of the Board of Commissioners, created by Act No. 143, of 1854. Sec. 9, of Act No. 151, allowed the Commissioner appointed to assist the Register and Receiver, a Salary of $3,000 per year; and like Act No. 143, it allowed the Register and Receiver "for their services under this Act," such compensation, as the Commissioner of the General Land Office should deem just and proper.

This compensation was in addition to salary and commissions by the Act of 1818, and the Fees given by other Acts to this Register and Receiver.

An Act of May 21th, 1858, (11 Stat., 292,) created a Land District in New Mexico. Sec. 2 authorized the appointment of a Register and Receiver. Sec. 3 prohibited this Act from going into effect for six months. These Officers were to have the same powers and compensation as other Land Officers; but on June 12th, 1858, Congress, for the benefit of these Officers, enacted the following:

Congress on June 12th, 1858, (11 Stat., 319,) in a paragraph of the Sundry Civil Bill, which made an appropriation to supply a deficiency in Washington Territory, enacted as follows: "And the Register of the Land Office and Receiver of Public Moneys in the Territory of New Mexico, shall receive the same compensation now allowed by law, to the

same class of Officers in Washington Territory: Provided, their compensation including Fees, shall not exceed, $3,000 per annum."

The Land Officers in New Mexico, Oregon, and Washington Territories were, "the same class" of Officers; because, they served in Territories where the public lands had been donated to the settlers, on certain conditions of continued occupancy, for a certain time; or they could purchase the lands in lieu of continued occupancy required. Consequently, the Land Officers, were allowed a certain Salary per year to each. The Land Officers in Oregon and Washington Territories, by Act No. 141, of July 17th, 1854, (10 Stat., 305,) were each allowed a Salary of $2,500 per year, and Office rent; with additional compensation for depositing the public moneys. These Officers were prohibited from charging any Fees; nor were they to receive any emoluments of any kind whatever; but we will show, that Congress subsequently, made them very considerable appropriations for Clerical services.

In New Mexico, by Act No 142, of July 22d, 1854, (10 Stat., 308,) the settlers could pre-empt the donated lands, if they preferred to do so; This gave to each Land Officer in New Mexico a pre-emption Fee of 50 cents, under Act No. 117, of September 4th, 1841. (5 Stat., 453.) It also gave to those Officers Military Bounty Land Warrant Fees, under Acts No. 133 of 1852, and No. 149 of 1855.

The Act of June 12th, 1858, allowed the Land Officers in New Mexico to retain the Fees they annually received, and it entitled each of them to be paid out of the Treasury a sum *in addition* to those Fees, to make a compensation of $3,000 to each per year, which was to include Office rent and compensation for depositing public moneys. This compensation was without any regard to the amount of work done by them. It was vastly more money than they could have earned had they been paid under the laws which compensated Land Officers generally.

In January, 1861, the Secty. of the Interior, to combat the opinion of Atty. Gen. Stanton, referred to the laws

relating to Land Officers in New Mexico, Oregon, and Washington Territories. Atty. Gen. Stanton referred those objections to his Assistant to reply to; who said:

"The local laws relating to New Mexico, Oregon, Washington, and California, have been cited, as opposed to your opinion. But it must be observed that those laws are peculiar in their provisions. They give the Register and Receiver a fixed salary of $2,500 each. This salary is paid to the officers out of the Treasury, without regard to the amount of business done; and I find, on careful examination, that the salary in each of the Land Districts above named greatly exceeds the whole amount of Fees, commissions, etc., which the officers would receive, if they were paid by Fees and commissions as other Registers and Receivers." (Digest, &c., p. 181.)

Act No. 153, of June 2d, 1858 (11 Stat., 294), confirmed certain private land claims in Missouri, and it required the Register of the proper Land Office, upon the application of each party, to issue Certificates of location, upon being paid a Fee of $1 for each Certificate issued.

The date of Act No. 153 is very important. The Fees which it authorized each Register to charge the claimants those Officers were NOT required to account for, nor to pay any part of them over to the Treasurer of the U. S.; nor were those Fees and the pre-emption Fees allowed by Act No. 117 of September 4th, 1841, or any part of them ever claimed as public moneys; and what is equally important to bear in mind, is the fact that the 3d Sec. and its provisoes of Act No. 133, of March 22d, 1852, became obsolete in 1853, when the Officers who had served from 1847 to March 22d, 1852, were fully paid out of the Treasury the additional compensation which it entitled them to receive. In the light of these facts and the preceding Acts of Congress to which we have referred, it is absurd to claim that any Fees of any kind, which Land Officers were authorized to charge third persons, were intended for the use of the U. S.; and what tends to render such a claim the more absurd, is the indisputable fact that all Fees, except the

Military Bounty Land Warrant Fees, were admitted to have been given by Congress for the use of the District Land Officers or to be retained by them as their private moneys, although the Military Bounty Land Warrant Fee Acts explicitly provided that the Land Officers were "SEVERALLY" authorized to charge and receive those Fees, which single fact proves conclusively that Congress especially intended them for the use of those Officers. The proof of this fact grows stronger and stronger by each Act of Congress to which we have yet to refer.

Act No. 141, of July 17th, 1854, made the Land Offices in Oregon and Washington Territories salaried Offices. It gave a Salary or $2,500 per year and Office-rent to each Officer; and in addition thereto, it allowed for the expense of depositing public moneys. It prohibited those Officers from charging any Fees of any kind; and it stipulated that they should not receive any emoluments of any kind whatever. To show more fully that Congress did NOT intend that District Land Officers should be required to expend the compensation allowed them for their personal services in the payment of Clerks or Office expenses of any kind, we call attention to the following:

No. 154.—An Act (approved June 5, 1858) making an appropriation for the payment of clerks employed in the offices of the Registers of the Land Offices at Oregon City and Winchester, in the Territory of Oregon. (11 Stat., 310.)

It appropriated $7,000 "to reimburse the Registers of Land Offices at Oregon City and Winchester, in the Territory of Oregon, for the expenses INCURRED BY THEM, in the employment of Clerks actually required for the transaction of the business of their respective Offices."

The following shows that Congress, in 1858, understood that the Pre-emption and Military Bounty Land Warrant Fees were allowed for the use of the District Land Officers.

No. 155.—An Act (approved December 21st, 1858), to continue the office of Register of the Land Office at Vincennes, Indiana, (11 Stat., 373.)

Act No. 143, of 1854, allowed the Register and Receiver for their special services under it such compensation as the General Land Office Commissioner should allow them. The Commissioner associated with the Land Officers was to be allowed $8 per day. Act No. 151, of 1856, allowed the Commissioner $3,000 per year, and the Register and Receiver were to receive such compensation for their services under this Act, as the Commissioner of the General Land Office should deem just and proper.

This Act, No. 155, required a Register of lands to be appointed, who was to perform all such duties, BOTH as Register and Receiver, as the Secty. of the Interior was to prescribe; for which special duties he was to receive a Salary of $500 per year; and in addition to such Pre-emption or Military Bounty Land Warrant Fees as existing U. S. laws allowed, he was authorized to charge a Fee for making transcripts of original papers for individuals, according to the Tariff existing in the local Courts of the District.

He was also entitled to a Salary of $500 per year, and to 1 per cent. Commissions on purchase-moneys received by him under the Salary and Commission Act, No. 58, of 1818—not to exceed $2,500 per year to each Officer.

Had Congress enacted any law requiring Military Bounty Land Warrant Fees to be accounted for, or which required them or any part of them to be paid over to the Treasurer of the U. S., it would not, in 1858, have referred to them, in this Act, as being such Fees "as existing U. S. laws" then allowed to Registers and Receivers. Moreover, the Pre-emption Fees were not even claimed as public moneys; and on November 21st, 1856, a General Land Office Circular to Land Officers said: "You have a Legal Right to a Fee in virtue of the 12th Sec. of the pre-emption Act of 4th of September, 1841, which declares that each Officer is entitled to receive 50 cents for his services, in acting upon each case of pre-emption." Section 12 of the Pre-emption Act, No. 117, of 1841, in reference to Land Officers and Pre-emptors, says: "Who shall each be entitled to 50 cents from EACH applicant for his services, to be rendered as aforesaid." The

Fees were for taking the proof of settlement, improvement, and continued occupancy.

The Pre-emption Fees were admitted by the General Land Office to have been given for the use of the Land Officers; and Congress having in December, 1858, asserted that those Officers had then as good a "LEGAL RIGHT" to the Military Bounty Land Warrant Fees as to the Pre-emption Fees, proves beyond controversy that Congress in 1858 construed the Fees under those Acts to belong to the Land Officers as their private moneys; which fact we have clearly proven by every preceding Act; and which we will sustain by Acts yet to be referred to.

We now call attention to an amendment of the Salary and Commission Act No. 58, of 1818, made in 1859. This afforded the Interior Department a good opportunity to get Congress to extend the limiting proviso of Act No. 58 to the Military Bounty Land Warrant Fee Acts No. 133, of 1852, and No. 149, of 1855. The amendment of 1859 is as follows:

No. 156.—An Act (approved February 2d, 1859,) to fix and regulate the Compensation of Receivers and Registers of Land Offices under the provisions of the Act approved April 20th, 1818. (11 Stat., 378.)

Be it enacted, &c., That the Act entitled "An Act for changing the compensation of Receivers and Registers of Land Offices, approved April 20th, 1818," shall be so construed, by the proper accounting Officers of the Government, as to restrict the aggregate amount allowed as compensation for the Register's and Receiver's commissions on moneys received at any Land Office in any one calendar year, to the sum of $2,500 each, and that the Registers and Receivers shall not receive for any one quarter or fractional quarter, more than a *pro rata* allowance of said maximum of $2,500. Their compensation, both for SALARY and COMMISSIONS, to commence and be calculated from the time they enter on the discharge of their duties.

The title to this Act is very significant; it related only to the compensation to which Land Officers where entitled

under the provisions of Act No. 58, of 1818, which was Salary and Commissions on purchase-moneys received from the sale of lands. Previous to the passage of this Act the year was an official one; each Officer was entitled to 1 per cent. Commissions, as soon as the money was earned, not to exceed $2,500 per year.

This amendment to Act No. 58, of 1818, made the year a calendar one, and divided the $2,500 Commissions per year into Quarterly payments of $625. The Salary and Commissions were to be calculated from the time the Land Officers entered on the discharge of their duties, as was required by Act No. 146, of 1855.

Mark the exact language of this amendment: Act No. 58, of 1818, "shall be so construed * * as to restrict the aggregate amount allowed as compensation for the Registers and Receivers Commissions on moneys received at any Land Office in any one Calendar year to $2,500 to each."

By examining Sections 1 & 2 of Act No. 58, of 1818, it will be seen that the "moneys received," was what the Receiver of Public Moneys receipted for, and such as was expressed in the Receipts "filed and entered" by the Register of lands, of which he transmitted an account to the Secty. of the Treasury. The moneys referred to, were the purchase-moneys received from the sale of lands; it was the only moneys which the Receiver could lawfully Receipt for, and was the only item of credit which could lawfully enter into a Receiving Account of Public Moneys.

In reference to the limiting proviso of Act. No. 58, of 1818, Atty. Gen. Stanton in his Official Opinion on January 17th, 1861, Said:

Provided always, that the whole amount which any Receiver of public moneys shall receive, under the provisions of this Act, shall not exceed for any one year, the sum of $3,000."

"It cannot be pretended that this restriction extends to compensation provided by subsequent Acts, because it is expressly confined to the sum which the Receiver shall be allowed under the provisions of the Act itself. In 1826, an

Act was passed giving that officer additional compensation for depositing the public moneys."

"In 1848, another Act gave him certain Fees for locating Bounty Land Warrants. But no person seems to have thought of charging these allowances to his account of commissions on moneys received."

"But on the 2d of February, 1859, an Act was passed declaratory of the construction of the Act, of April 20th, 1818, and it was enacted, that the former Act should be so construed as to 'restrict the aggregate amount allowed as compensation for the Register's and Receiver's commissions on moneys received at any Land Office, in any one calendar year, to the sum of $2,500 each; and that Registers and Receivers shall not receive for any one quarter or fractional quarter, more that *a pro rata* allowance of said maximum of $2,500 (11 Stat., 378). Giving this provision full effect as a new enactment, changing the terms of the former Act of 1818, it can still only be construed as applying to 'the commissions on money received at any Land Office.' How can it be said that it includes commissions on warrants located? The warrant is not money, and its location is not a sale. Another consideration confirms this view. On the sale of Public Lands, the Receiver's commissions are paid by the Government. But the Fees for locating a warrant are paid by the warrant holder."

The Secty. of the Interior, in January, 1861, refused to respect the opinion of Atty. Gen. Stanton, and made a statement to the Secty. of the Treasury, in which he assumed to understand the laws better than the Atty. Gen.; the Secty. of the Treasury sent it to Atty. Gen. Stanton, who instructed his Assistant to prepare additional reasons to sustain the opinion of January 17th, 1861, a copy of which was given to the Defendant in error and put in evidence, which contains the following:

"This view is completely and conclusively confirmed by the fact, that with a full knowledge of the construction which was placed by the Department upon the Act of 1818, Congress, on the 2d of February, 1859, passed an Act

declaring the construction of the former Act, and providing that it should be so construed 'as to restrict the aggregate amount allowed as compensation for the Register's and Receiver's commissions on moneys received at any land office, in any one calendar year, to the sum of $2,500 each.'"

"This is the last legislation on the subject. Its object was to give a construction to the Act of 1818, but instead of extending the restriction to Fees on the percentage for locating Land Warrants, it expressly applies it to the commissions on moneys received. This ought to settle the question."

We have shown the desperate effort made by the Secty. of the Interior and the General Land Office to induce Congress to approve of the grossly illegal Circular Order of April 27th, 1857, which required Military Bounty Land Warrant Fees to be accounted for, and a portion of them to be deposited with the Treasurer of the U. S. But Congress would not do so; on the contrary, it expressly confined the limiting proviso of Act No. 58, of 1818, to the Salary and Commissions received under its provisions.

The following enactment of June 22d, 1860, also shows that Congress could NOT be induced to depart from its policy of compensating District Land Officers by Fees, IN ADDITION to Salary, and Commissions, allowed by Act No. 58, of 1818, and other compensation given by other Acts. It is the last Act of Congress allowing Fees to District Land Officers during the term of the Defendant in error.

No. 157.—An Act (approved June 22, 1860,) for the final adjustment of private land claims in the States of Florida, Louisiana and Missouri, and for other purposes. (12 Stat., 85.)

By this Act the Registers and Receivers were appointed Commissioners to hear and decide all matters respecting such claims, and it further provided as follows:

Section 9. That before the Boards of Commissioners shall be required to receive for record any notice, paper, evidence of title or testimony, in support of any claim, the

claimant shall pay to said Board the sum of twenty-five cents for every 100 words required to be recorded. * *

The Officers were NOT required to account for any of those Fees, nor to pay any part of them over to the Treasurer of the U. S.; nor were they, or any part of them, claimed as public moneys; nor could they have been lawfully claimed as such. They were allowed for the private use of the Officers, who received them, for their services under this Act.

The following Act to reimburse the Salaried Land Officers in Washington Territory, for Clerical assistance, is the last Act of Congress compensating District Land Officers during the term of the Defendant in error; it is as follows:

The Act of March 2d, 1861, to provide for bringing up the arrearages of work of the land office at Olympia, Washington Territory. (12 Stat., 198.)

This Act authorized the Secretary of the Interior to allow not to exceed $3,000 for past and future Clerical Services at this District Land Office; to be paid out of the appropriation for incidental expenses of District Land Officers.

The land Officers in Washington Territory, by Act No. 141 of July 17th, 1854 (10 Stat., 305), were allowed a Salary of $2,500 per year, and Office rent, and also compensation for depositing public moneys. This was to be paid them out of the Treasury of the U. S., without any regard to the amount of work done by them, or to the amount of revenue derived from their Offices. This Act shows most conclusively that Congress did not intend District Land Officers to be required to expend the compensation allowed them for their personal services in the employment of Clerks to aid in doing the public business.

We have called attention to all of the laws of Congress, from 1800 to 1861, for the compensation of District Land Officers, during that period of time; nothing is left to be implied, which is not expressly directed by the various laws enacted, and modes adopted

by Congress, from time to time, to compensate those Officers. We have shown conclusively, that no one Act of Congress can be taken to determine the full compensation of District Land Officers, from 1800 to May 6th, 1861. The language of the laws referred to are so CLEAR as to leave NO room for construction; consequently there cannot be any resort to interpretation. Each and every law speaks in clear, unambiguous and unmistakable language, showing the intention of Congress in enacting it. We have shown indisputably that Congress from and after 1800, in compensating Land Officers, drew a broad line of demarkation between such compensation as was paid to them out of the Treasury, and such as they were each, severally or jointly, allowed to charge and receive from third persons, for services rendered them. The compensation paid to those Officers out of the Treasury after 1818, was invariably limited in amount, whilst the FEES which they were allowed to charge and receive from third persons were NOT limited in amount, nor were the Officers in a single instance required to account for them, or to pay any part of them over to the Treasurer of the U. S. The laws of Congress show that it had but one invariable mode of making any moneys of any kind received by public Officers public moneys. It requires as specific an Act of Congress to get moneys lawfully into the Treasury, as to get them out.

Having referred to all of the Acts of Congress which in any way relate to the Defendant in error, as a District Land Officer, and by the light of which the Third question raised by the Special Verdict must be decided, we will now refer to the Acts of Congress enacted from 1861 to 1864, which do NOT apply to the Defendant in error, but which throw much light on the Third question raised by the Special Verdict for the opinion of the Court; and which show that NO moneys, in the opinion of Congress, can be claimed as public moneys, except such as by an express enactment of Congress required the receivers thereof to account for, or to pay into the Treasury of the U. S.

There are two kinds of Land Offices: Single or Sepa-

rate District Land Offices, and CONSOLIDATED District Land Offices. The Defendant in error served during the whole of his term in a separate District Land Office. When the lands are mostly sold in such a District, and the moneys received fall below a certain amount, the law requires it to be united with some other District; and when two or more are united, they are known in law as Consolidated District Land Offices.

The General Land Office had labored long and unsuccessfully to induce Congress to make a part of the Military Bounty Land Warrant Fees Public moneys; but during the confusion in Congress in February, 1861, it succeeded in getting Congress to make a part of the Fees received in Consolidated Land Offices payable into the Treasury of the U. S.; the Act is as follows:

No. 158.—An Act (approved February 18, 1861.) making further provision in relation to consolidated land offices. (12 Stat., 131.)

This Act, in Sec. 1, allowed the Register for the Consolidated Land District at Boonville, Missouri, in addition to the Fees then allowed by law, certain other Fees from individuals, for making transcripts, or furnishing any record information, with this proviso: *Provided*, That the whole amount of the Register's compensation, including all Fees and commissions to which he is entitled under existing laws, shall not exceed $3,000 per annum, or *pro rata* per quarter, the excess, if any over that amount, shall be paid into the Treasury of the United States; and the Receiver shall receive his equal share of such Fees, and it shall be his duty to aid the Register in the preparation of the transcripts or giving the record information as aforesaid.

This proviso shows that Congress had NOT previously required any Military Bounty Land Warrant or other Fees received by the Officers of a Consolidated Land Office to be paid into the Treasury; and that in the opinion of Congress it required an explicit Act, ordering Fees to be paid into the Treasury of the U. S. before they could be claimed as public

moneys. Nor will it escape the observation of the Court that NO compensation, but Fees, received under the various Acts, and Salary and Commissions, received under Act No. 58, of 1818, were by this proviso limited to $3,000 per year; and, further, that in the opinion of Congress the limiting proviso of the Salary and Commission Act No. 58, of 1818, did NOT apply to any other compensation than such as was received under the provisions of that Act; or the proviso to this Act No. 158 would NOT have been necessary.

The 2d Sec. of this Act required the Office rent of Consolidated Offices to be paid; and it also required the Officers to be allowed for Clerk-hire, which compensation was in addition to the $3,000 for Fees, Commissions, and Salary per year; therefore, even this Act did NOT limit compensation from all sources, to $3,000 per year. The 3d Sec. is as follows:

Section 3.—That the provisions of this Act be and they are hereby extended to all other consolidated land offices: *Provided*, That this Act shall be construed to extend to and provide for all expenses heretofore incurred by any Register or Receiver of any such consolidated land office for additional clerical aid or office room: *Provided* further, That the amount of such indemnity be first approved by the Secretary of the Interior.

This Sec. expressly limited the operation of this Act to Consolidated Land Offices. The 4th Sec. required an allowance to be made to former Registers of Consolidated Land Offices for Office Rent and for Clerk-hire, without any regard to the amount of Fees, and to the Salary and Commissions which they may have received per year. This Act did NOT apply to or in any way affect the Defendant in error, as he served in a single or Separate District Land Office. It has been referred to, as it shows very clearly what legislation was required to make any Fees public moneys.

The next Act to which we call attention is as follows:

An Act (May 20th, 1862,) to secure homesteads to actual settlers on the public domain. (12 Stat., 392.)

Sec. 2 required each citizen upon making an application for a homestead right to pay to the Register and Receiver a Fee of $10; and the 6th Sec. required each applicant to pay 1 & 1–4 cent an Acre on filing his claim, as commissions for the Register and Receiver; and a like amount at the expiration of Five years; making in all 2 & 1–2 cents an Acre for the land, as Commissions, to the Register and Receiver; which Sec. extended the limiting proviso of the Commission Act No. 58, of 1818, to these Commissions, limiting them to $2,500 per year to each Officer; but the Fee of $10 they were NOT required to account for, nor to pay any part of it into the Treasury; and of course it was the private moneys of the Officers, to be divided by them. This Act made the cost to the claimant of a homestead right to 160 acres $14.

The next Act to which we call attention is as follows:

An Act (May 30th, 1862,) to reduce the expenses of the Survey and Sale of the public lands in the United States. (12 Stat., 409.)

Sec. 6 of this Act, from and after July 1st, 1862, required all Fees of every kind, which Land Officers "in all of the Land Offices in the U. S." were then authorized to charge and receive from third persons to account for them, and it limited the compensation of those Officers for Salary to $500, and for Fees and Commissions to $2,500 per year.

This 6th Sec. was prohibited from going into effect until July 1st, 1862, which was more than a month after the Act became a law. This is proof positive, that Congress had NOT previously required Land Officers, who served in Single District Land Offices to account for any Military Bounty Land Warrant Fees, or to pay them or any part of them into the Treasury; or the 6th Sec. of this Act would not have been passed, and its operation SUSPENDED until July 1st, 1862.

Attention is called to the following:

An Act (March 21st, 1864,) amendatory of the homestead law, and for other purposes. (13 Stat., 35.)

This Act increased the Fees payable by homestead

claimants to $2 to each Officer when the land was claimed, and a like Fee when the Certificate was issued for a Patent as Commissions, which was equal to 2 per cent. to each Officer on $200, the price of the land claimed. This Act also allowed each Officer to charge pre-emptors a Fee of $1, which by the Act of 1862 they were required to account for, and, therefore, they were made public moneys. This Act further authorized the Officers "jointly" to charge pre-emption and homestead claimants a Fee of 15 cents for every 100 words of testimony reduced to writing, which they were not required by law to account for, consequently Congress gave them for the use of the officers, as private moneys. Section 6 contains a proviso which limits salary and Fees to $3,000; which obviously could only include Fees payable into or accountable to the Treasury of the United States.

This Fee of 15 cents the Interior Dept. admitted belonged to the Officers as their private moneys, as is shown by the following:

"Circular—Homestead Amendment and Fees."

"DEPARTMENT OF THE INTERIOR."

"GENERAL LAND OFFICE, April 18th, 1864."

"Gentlemen: * * It will *hereafter* be necessary for the Register and Receiver to account in all cases for pre-emption Fees received as revenue; using the Fee-Statement already provided."

"There is another service, however, contemplated in said 4th section, *which is not to be accounted for as Fees constituting a source of revenue;* and that is the authority the said section gives to the Register and Receiver for receiving jointly at the rate of 15 cents per 100 words, for the testimony which may be reduced by them to writing for claimants in establishing pre-emption or homestead rights." * *

"Reg. and Recv." "Very Respectfully,"

"J. M. EDMUNDS, Comm."

By this Circular the Interior Department decided

through the Commissioner of the General Land Office, that because the Fee of 15 cents for every 100 words had not been required to be accounted for, therefore, a proviso, in an Act, which limited Fees and salary to $3,000 per year, did not include or refer to any Fee which the receivers thereof had not been required by an express enactment of law to account for. This is a common-sense and just construction of law; and in this controversy, is of the first importance.

Attention is now called to the date and language of the following Act:

An Act (July 1st, 1864,) to regulate the compensation of Registers and Receivers of the Land Offices in the several States and Territories in the location of lands, by States and Corporations, under grants from Congress. (13 Stat., 335.)

Sec. 1, of this Act, required States, (except for the location of lands for Agricultural Colleges,) and Corporations to pay to the Land Officers a Fee of $1 for each final location of 160 Acres of land, which Fees those Officers were required to account for, in the same manner, as Fees, on Military Bounty Land Warrant and Pre-emption locations, with limilations as to the Salary Commissions and Fees prescribed by the Act of May 30th, 1862, and with such instructions as should be given by the General Land Office.

If Congress had not, in this Act, required the Fees allowed by it to be accounted for, and had not limited the amount of them, which the Officers were allowed to claim per year for their services, they would have been entitled to all of those Fees received per year.

From first to last, Congress strictly construed all provisoes, limiting compensation to Land Officers. It uniformly declared, by its Acts, that the limiting proviso of one Act, giving compensation by Commissions, did NOT extend by construction to a subsequent Act giving additional Commissions; and we have also shown that Congress, as strictly construed provisos limiting Fees and Commissions

from 1862 to 1864: and that the General Land Office in 1864 decided that Fees which Congress had not required to be accounted for could NOT be claimed as public moneys, which was a correct understanding of the intention of Congress.

Salary, Commissions, and Fees only which the receivers thereof had been explicitly required to account for after July 1st, 1862, were limited to $3,000 per year. Under the power given to the General Land Office, by the Act of May 30th, 1862, the practice has been to allow Land Officers for Office Rent, Clerk-hire, and depositing public moneys, in addition to the $3,000 per year allowed for Salary, Commissions, and Fees, which the receivers thereof were by express enactment of Congress required to account for, and pay into the Treasury of the U. S. No Act of Congress from 1796 to 1864, ever limited the compensation of Land Officers to $3,000 per year from all sources.

The Acts from 1862 to 1864 to compensate District Land Officers did not affect the Defendant in error, as he ceased to be a Land Officer on May 6th, 1861. The Defendant in error, has clearly and indisputably shown his right to all the Military Bounty Land Warrant Fees which the law authorized him to charge and receive from Warrant holders, from 1857 to May 6th, 1861, and to 1 per cent. Commissions on purchase-moneys received by him, from the sale of lands, not to exceed $2,500 Commissions per year; and, therefore, he is entitled to the amount stated in paragraph "F" of the Special Verdict to be due to him.

R. T. MERRICK,
JOHN H. SLOAN,
Attorneys for Defendant in error.

110-688.

115-688

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 216.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WILLIAM BRINDLE.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF FOR DEFENDANT IN ERROR.

M. F. MORRIS,
Of Counsel for Defendant in Error.

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BRIEF FOR DEFENDANT IN ERROR.

I.

STATEMENT OF CASE.

The controversy in this case is in reference to the settlement of the various accounts of the defendant in error under his several and separate appointments, as special receiver and superintendent of the sale of Indian trust lands in Kansas Territory, and under his appointment as receiver and disbursing agent for the district of public lands subject to sale at Lecompton, in the same Territory. These appointments extended from October 24, 1856, to May 6, 1861, and

the main subject of controversy is the amount of compensation to which the defendant in error is entitled.

Mr. Brindle's appointments, in chronological order, were as follows:

1st. On October 24, 1856, he was appointed by the Secretary of the Interior a special receiver and superintendent to assist the special commissioner to sell the Delaware Indian trust lands at Fort Leavenworth, in the Territory of Kansas, under the treaty of May 6, 1854, with the Delaware tribe of Indians, (Rec. p. 10.) The treaty may be found in 10 Statutes, page 1048. It does not appear whether, under this appointment, any bond was given or not.

2d. On the 18th of February, 1857, he was appointed by the President of the United States, with the advice and consent of the Senate, receiver of public moneys for the district of lands subject to sale at Lecompton, Kansas, and also disbursing agent for the same district. And on March 19 he gave bond in the sum of $50,000 for the faithful performance of his duties as receiver, and in the sum of $5,000 as disbursing agent. (Record, p. 9.)

3d. On May 15, 1857, at the request of the Commissioner of Indian Affairs, he was appointed by the Secretary of the Interior a special receiver and superintendent to assist the special commissioner to sell, at Paoli, in Kansas Territory, the Indian trust lands of the Kaskaskia and Peoria, Piankeshaw and Wea united tribe of Indians, under the treaty with them of May 30, 1854 (10 Statutes, page 1082). It does not appear that, under this appointment, any bond was given. (Rec., p. 10.)

In December, 1860, a dispute arose between Mr. Brindle, on the one side, and the accounting officers of the Interior

and Treasury Departments, on the other side, as to the principles of law on which his accounts should be settled, and those officers also differed radically between themselves. Mr. Brindle claimed to be entitled to retain, as compensation for his services in the location of military bounty land warrants, a fee of $1\frac{1}{4}$ cents an acre, as authorized by law to be charged and received and retained by him for such location; and as compensation for his services in the sale of Indian trust lands, a commission of one per centum upon the amount of the proceeds of sale. The accounting officers did not admit the claim; and thereupon the Secretary of the Treasury directed the matter to be referred to the Attorney General for his opinion. The Attorney General decided in favor of the defendant to the full extent of his claim.

The First Comptroller then requested the Commissioner of the Land Office to state Mr. Brindle's accounts of sales of public lands, in accordance with the opinions of the Attorney General, and to transmit the accounts to the office of the First Comptroller. The Commissioner of the Land Office stated an account, which was not in accordance with the opinion of the Attorney General. He charged Mr. Brindle with an item of $8,170.45, which the Commissioner of Indian Affairs had previously directed to be appropriated to expenses. This item, with a small balance of $137.78 on the Delaware Indian account, which was shown to be more than counterbalanced by an item of $142.27 in favor of the defendant, and an item of $943.45, on receiver's account, which is also conclusively shown to be erroneous, making in all $9,251.68, constituted the account which the First Comptroller certified, and which is the basis of this suit.

Meanwhile, however, the Secretary of the Interior directed the Commissioner of the General Land Office to confine himself to the statement of accounts of sales of the public lands, and to leave the settlement of the accounts of the Indian trust lands to the Commissioner of Indian Affairs. The last-named officer, thereupon stated the defendant's accounts of the sales of the Indian trust lands, allowed him commissions on each sale at the rate of one per centum to the amount of $2,500, together with the other expenses of those sales, and sent the accounts to the Second Auditor. The Second Auditor found an aggregate balance of $1,931.50 due from the defendant to the United States on account of the Indian trust lands; and his statement, of course, took in and included that made by the First Comptroller on the same subject. To this account the Second Comptroller certified.

This account specified the various items of dispute and difference between the defendant and the accounting officers, the items rejected as well as those admitted. Taking into consideration two credits subsequently allowed, this account shows an indebtedness by the United States to the defendant, as will more fully appear.

Yet when, after long delays, suit was finally instituted against the defendant in the District Court of the United States for the Eastern District of Pennsylvania, on May 23, 1877, on the official bond of the defendant as receiver of public moneys, the suit was based upon the partial and incomplete account stated by the First Comptroller, and not upon the fuller and subsequent account stated by the Second Comptroller.

Pending this suit, Congress intervened, and investigated

the case; and thereupon a special act was passed, under date of June 10, 1878, (20 Statutes, p. 541,) entitled "An act to pay for clerical services and extraordinary expenses under the seventh section of the act of August 18, 1856, in the Pawnee land district, in Kansas." This act is in the following words:

"*Be it enacted, &c., &c.*, That, in accordance with the seventh section of the act of August 18, 1856, and the settlement of the account of William Brindle, receiver of public moneys and disbursing agent in the Pawnee land district in Kansas, under and in accordance with said act, and the report by the Secretary of the Interior to Congress on January 26th, 1861, as required by said act, the sum of $4,713 be, and the same is hereby, appropriated, which amount shall be placed to the credit of said Brindle, late receiver, and so forth, to bear date from January 26, 1861, being the date of settlement and report of said account under said act.

"SEC. 2. That the suit now pending in the District Court of the United States for the Eastern District of Pennsylvania, at May sessions, 1877, number 4, brought by the United States against William Brindle, shall not be withdrawn, discontinued, nor abandoned by the United States without the written request or consent in writing of said William Brindle, filed of record therein; and in the trial of said cause the said court shall hear and determine all disputes and differences between the United States and the said William Brindle in reference to his various accounts as receiver and acting disbursing agent of public money in the Pawnee land district in Kansas, and also in relation to his accounts as special receiver of Indian trust moneys received and expended under the Indian treaties of May 6 and May 30, 1854, as well under said treaties as under the laws of the United States; and the said William Brindle, in the trial of said cause, shall be permitted and entitled to make defense and claim set-off in his favor in said court, if said court shall determine him to be entitled thereto, with the same effect as if said suit were commenced by an individual against the said William Brindle, and said set-off shall not be barred by any statute of limitations. And should the

said court, in the said trial, determine that there is a balance due to the said William Brindle upon said accounts, the court shall certify the amount so found to be due to him to the Secretary of the Treasury of the United States, for payment out of any money in the Treasury not otherwise appropriated; reserving, nevertheless, the right of appeal to either party from the judgment of said court."

Under this special act the case was tried, the defendant having filed a notice of set-off. (Record, p. 9.)

There was a special verdict (Record, p. 9 to 13 inclusive) containing seventeen distinct and separate findings of fact; and thereupon eight (8) alternative conclusions or special findings, all but one (the first) in favor of the defendant in error, subject to the opinion of the court upon certain specified questions of law involved in the case and therein stated.

Upon this special verdict, judgment *pro forma* was entered by the district court for the defendant. And thereupon the court, in accordance with the provisions of the special act under which the case was tried, further proceeded to certify to the Secretary of the Treasury that it had found due to the defendant from the United States a balance of $50,979.19, with interest from June 13, 1879, the date of the special verdict. (Record, p. 14.)

Upon writ of error the circuit court affirmed the judgment of the district court, and the case is now brought here for review of the judgment of the circuit court.

II.

Brief of Argument.

There is no bill of exceptions in this case. Whether, upon such a special verdict as that in this record, and a gen-

eral judgment thereon in favor of the defendant, the ruling of the district court can be reviewed here without a bill of exceptions, signed and sealed in the usual way, is a question that may admit of some doubt.

It has also been suggested as a doubtful question whether this court can exercise appellate jurisdiction in such a case as this; whether the special act of Congress has not converted the case into one of arbitration rather than of ordinary judicial determination; and whether the requirement that the district court should certify its conclusion to the Secretary of the Treasury does not preclude this court from exercising appellate jurisdiction in the premises. But the defendant very much prefers that the Court should hear the case upon its merits; and he is entirely willing to wave all question of jurisdiction.

1.

The main question in the case, on its merits, is the amount of compensation to which the defendant in error was entitled in his several appointments; and, as subordinate thereto, the question whether the *First* Comptroller or the *Second* Comptroller was the proper officer to state the defendant's accounts in reference to the Indian trust lands. We proceed first to dispose of this second question.

That the defendant's appointment with reference to the sale of Indian trust lands under the treaties of May 6, 1854, and May 30, 1854, and the duties thereby devolved upon him were entirely distinct and separate from his dutes as receiver of public moneys, would seem to be too plain for argument. The Indian trust lands ceded under those treaties did not become in any proper sense whatever public lands of the United

States. They were to be sold and disposed of, it is true, in the same manner as the public lands. But the proceeds were not to belong to the United States. The United States assumed the duty of selling the lands as a trustee and holding the proceeds in trust for the Indians, and the sales, when made, were not made by or under the orders of the General Land Office, but under the direction of the Commissioner of Indian Affairs. The defendant was simply detailed to aid the Commissioner of Indian Affairs, and the moneys which he received were the moneys of the Indians, unless a guardian or trustee can be regarded as owning the money which he holds for his ward or beneficiary. Would any court hold that he could be made liable on his bond, or that his sureties could be held on his bonds as receiver of public moneys for any misappropriation of these Indian trust funds? And if his sureties could not be so held, is not that fact alone decisive of the whole controversy on this point? If the funds were funds of the Indians the defendant's accounts of them were to be audited by the Second Auditor, whose duty it is by law to audit "all accounts relating to Indian Affairs, (Rev. Stat., sec. 277,) and to be supervised by the Second Comptroller, (Rev. Stat., sec. 273;) and the First Comptroller had nothing whatever to do with them, and was not justified in taking cognizance of them.

This necessarily disposes of Conclusion A of the special verdict, and necessarily requires a judgment for the defendant under some one of the other conclusions.

Now, if the defendant's duties, in reference to the Indian land business, were entirely separate and distinct from his duties as receiver of public moneys for the sale of public

lands, he is entitled to compensation for those services, unless there is some law forbidding it. There is no such law. It is true that the Act of Congress of August 31, 1852, (10 Stat., p. 100,) in a section which has been incorporated into the Revised Statutes, (Rev. Stat., sec. 1763,) provides that "no person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law." But this act, if strictly construed according to its letter, would apply only to officers receiving precisely only a compensation of $2,500 a year, and to no others. In any event, it only applies to compensation *out of the Treasury* for other services. And in the present case, express provision is made by law for compensation. The treaties, which have been mentioned, and which, of course, have all the force of law, expressly provide that "the United States agree to pay to said tribe all the moneys received from the sales of the land * * * *after deducting therefrom the cost of surveying, managing, and selling the same.*"

In the case of Converse *vs.* United States (21 Howard, 463,) it was decided by this court that an officer is entitled to compensation, in addition to that provided by law for the regular duties of his office, whenever he performs services for the Government outside of those which belong to his office, and for which compensation is provided by law. And the present is a much stronger case.

The amount of compensation, however, was not fixed by the treaties; and the Second Comptroller, in stating the defendant's account of these sales, limited him to a com-

pensation of $2,500 for each sale, by analogy to the limitation on his commissions as receiver of the proceeds of sales of public lands.

This was one of the questions submitted to the district court for its determination, and the jury, in its special verdict, (Record, pp. 11, 12,) found that one per cent. commission on the amount of the sale was a fair compensation, (Finding No. 17,) and it also found (Finding No. 16,) that the defendant had reasonably and necessarily expended the sum of $3,891.55 in making the sales, for which credit had not been given by the First Comptroller and should have been given to him, which was subsequently done by the Second Comptroller.

It is perfectly apparent, therefore, that the defendant was entitled to commissions at the rate of one per cent. upon the sales of the Indian trust lands, as well as to his reasonable costs in the conduct of the sales. Consequently, no less can be awarded to him than is specified in Conclusions D and G.

2.

The next question is, what limitation is there, if any, upon the defendant's compensation for the location of military bounty land warrants?

The act of April 20, 1818, (3 Stat., p. 466,) regulated the compensation of receivers of public money. It provided:

"That, instead of the compensation now allowed by law to the receivers of public moneys for the lands of the United States, they shall receive an annual salary of $500 each, and a commission of one per centum on the moneys received, as a compensation for clerk hire, receiving, safe-keeping, and transmitting such moneys to the Treasury of the United

States: *Provided always*, That the whole amount which any receiver of public moneys shall receive under the provisions of this act shall not exceed for any one year the sum of $3,000;"

Which was amended on May 22d, 1826, (4 Stat., 193,) so as to allow additional compensation for depositing public moneys.

Plainly this act of 1818 applied only to moneys of the United States received as the proceeds of sale of the public lands. Under it the defendant was entitled altogether, during his whole term of office, only to $1,295.13 as commissions; and of this amount the sum of $636.28 was improperly disallowed him. (Record, pages 10 and 11.)

The claim of defendant is that this act has no reference whatever to the compensation subsequently provided by the acts of Congress in regard to the location of military bounty land warrants except in fixing the rate of fees to be charged; that the matter of the location of military bounty land warrants was something not contemplated by the act of 1818; and that for such location the receivers are authorized to charge and receive, and retain for their own use, without limitation as to amount and without accountability to the Treasury, certain fees to be paid by the locators and not by the United States.

The examination of this point requires an investigation of various acts of Congress bearing on the subject; and for this we must ask the patient indulgence of the Court. In view of the fact that a decision of this Court in the case of the United States *vs.* Babbitt (1 Black, page 55) appears to be adverse to the theory of the law which we maintain to be correct, we ask the Court also, with all due respect and

submission to its adjudications, to permit us to call to its attention some acts of Congress to which its attention does not seem to have been called in the Babbitt case, as well as some of a later date which have an important bearing upon the subject. We are all the more strongly induced to ask this indulgence by the fact that, at the time of the Babbitt decision, there seems to have been only four judges on the bench, and none on the bench who are on it now; and also by the fact that Congress, notwithstanding that it had the Babbitt decision before it, has thought proper, as it has done by the special act mentioned in the previous part of this brief, to remit again the point in controversy to further judicial arbitrament. As the result of this further investigation, one of the ablest judges on the circuit has not hesitated to render a decision at variance with that in the Babbitt case.

3.

The system of military bounty land warrants, as far as our present case is concerned, was inaugurated during the exigencies of our war with Mexico, by the act of Congress of February 11, 1847, (9 Statutes, 125, sec. 9,) by which donations of 160 acres of land, or fractional parts thereof, according to circumstances, were provided to be made to certain non-commissioned officers and soldiers of that war, and the bounty was made to inure, to a limited extent, to the benefit of certain personal representatives of such officers and soldiers. No fees were provided by this act to be paid by the holders of warrants to the receivers for the services which were to be performed by them in the location of these warrants.

But by an act of May 27, 1848, (9 Stat., 231,) holders of these warrants, other than the soldiers themselves—that is, the personal representatives mentioned in the act and in the preceding act—were required to pay to the receivers, *as compensation for their services*, a fee of fifty cents for every location of 160 acres, and twenty-five cents for every location of forty acres.

An act of September 28, 1850, (9 Stat., 520,) extended the benefits of the act of February 11, 1847, to soldiers of the War of 1812, to soldiers of the various Indian wars, and to commissioned officers of the Mexican war. It provided that the Commissioner of the General Land Office should not charge any fees under this act for the location of warrants sent to him for that purpose.

The land warrants issued under these various acts were not assignable, and, consequently, very few of them were, in fact, located at all. But by an act of March 22, 1852, (10 Stat., 3,) Congress made them assignable, largely extended the benefits of the previous acts, and, in view of the immensely increased labor which would thereby be imposed upon the receivers and registers, provided that increased fees should be made to them for their services in the location of the warrants. The sections that have reference to compensation are the second and third, and they are as follows:

"SEC. 2. *And be it further enacted*, That the registers and receivers of the land offices shall hereafter be severally authorized to charge and receive for their services in locating all military bounty land warrants issued since the 11th day of February, 1847, the same compensation or percentage to which they are entitled by law for sales of the public lands for cash at the rate of $1.25 per acre, the said

compensation to be hereafter paid by the assignees or holders of such warrants.

"SEC. 3. *And be it further enacted*, That registers and receivers, whether in or out of office at the passage of this act, or their legal representatives in case of death, shall be entitled to receive from the Treasury of the United States, for services heretofore performed in locating military bounty land warrants, the same rate of compensation provided in the preceding section for services hereafter to be performed, after deducting the amount already received by such officers under an act entitled 'An act to require the holders of military land warrants to compensate the land officers of the United States for services in reference to the location of those warrants,' approved May 17, 1848: *Provided*, That no register or receiver shall receive any compensation out of the Treasury for past services who has charged and received illegal fees for the location of such warrants: *And provided further*, That no register or receiver shall receive for his services during any year a greater compensation than the maximum now allowed by law."

The additional labor imposed on the receivers by this act was very great. The bounty land warrants passed largely into the hands of speculators. Many of them bore numerous assignments. Any number could be used by the same person. They could be used by pre-emptors, as well as in locating lands subject to private entry. A pre-emptor claiming 160 acres of land, could use four 40-acre warrants, or two 80-acre warrants. Each bounty land warrant required a separate entry, and duplicate certificates of location; and the labors of the receiver were, in consequence, greatly increased.

On the contrary, the sale of a tract of 640 acres required only one entry; and the receiver was allowed $8 for it from the Treasury as a commission on the purchase moneys received.

Section two of this act of 1852, in express words, pro-

vided for the future compensation of receivers, with reference to the increased duties imposed upon them by the act; and plainly it was merely prospective in its operation. On the contrary, section three was merely temporary in its character, and intended to provide special compensation out of the Treasury of the United States for those receivers who were in office from 1847 to 1852. In this there is no unjust or unfair discrimination, because the duties of the receivers during that period were very different from those required to be performed in the future, in respect of the location of military bounty land warrants. The compensation to be paid under the third section was in consideration of the services which had been rendered from 1847 to 1852; and inasmuch as it was to come directly out of the Treasury, the propriety of a limitation on the amount was plain. Any land officer, who, for past services, had received his maximum of commissions of $2,500 per year, "during any year" from 1847 to 1852, was not to receive any of the additional compensation *out of the Treasury of the United States* allowed by the third section of this act; but it allowed him to retain all of the bounty land warrant fees, which he had received from warrant holders, under the fee act of 1848. On the other hand, by the second section of the act of 1852, all locators are required thereafter to pay to the receivers a fee for location, determined by the rate which the United States, under the act of 1818, allowed from the public funds for cash sales of the public lands; that is, at the rate of 1¼ cents an acre. This was to be a compensation to the receivers: it was to be paid by the locators, and not by the public Treasury; and certainly it is not to be supposed that the Government purposely imposed these fees upon the

out of this appropriation of 1853, and then it required the surplus to be carried back into the Treasury under the "Surplus Fund" act of August 31, 1852 (10 Statutes, 76, sec. 10). No appropriation act, either previous to or during the term of office of the defendant in error, made any provision for the payment of fees to district land officers. This proviso of the appropriation act of 1853 merely authorized the additional compensation for past services, under the third section of the act of 1852, to be paid out of this appropriation.

In the third place, in the act of March 3, 1855, (10 Stat., 701, sec. 6,) Congress distinctly, and *without any limitation whatever*, re-enacted the provisions of the second section of the act of March 22, 1852. It enacted "that the registers and receivers of the several land offices shall be severally authorized to charge and receive for their services in locating all warrants under the provisions of this act the same compensation or percentage to which they are entitled by law for sales of the public lands for cash, at the rate of $1.25 per acre; *the said compensation to be paid by the assignees or holders of such warrants.*" And yet it has been exceedingly particular in another act passed upon the same day (10 Stat., 635,) to limit the compensation, or rather to renew the usual proviso of limitation, because in the latter act and that to which it referred (the graduation act of 1854) the increased compensation was to be paid *out of the public moneys of the United States*, and not paid by individual holders of warrants, thus again pointedly illustrating the distinction for which we have contended of a limitation when a payment has to be made out of the public moneys or out of the Treasury, and

of no limitation when individual holders of warrants are to make the payment.

In the fourth place there would have been no necessity if the construction in the Babbitt case were the correct one, to provide, as Congress subsequently did in the act of May 30th, 1862, (12 Stat., 409,) that registers and receivers should from and after July 1st, 1862, account to the Treasury of the United States for all fees then allowed by law, and that from and after July 1st, 1862, *fees*, *salary*, and *commissions* should be limited to $3,000 per annum; and lastly, there would have been neither necessity nor propriety in passing the special act under which this case was tried.

In the opinion in the Babbitt case other acts of Congress are referred to, as that of May 3d, 1853, (10 Stat., 245,) establishing land offices in California, which gave to the register and receiver each *an annual salary* of $3,000, *to be paid out of the Treasury of the United States*, and *in addition thereto* each was allowed to charge each pre-emptor under section 12 of the pre-emption act of September 4th, 1841, (5 Stat., 453,) a pre-emption fee of 50 cents for their own use; *and in addition thereto* the receiver was to be allowed for the expenses of depositing public moneys.

A similar act of July 17th, 1854, (10 Stat., 306,) for Oregon and Washington Territories, and a similar one of July 12th, 1868, (11 Stat., 325,) for the Territory of New Mexico, all giving an annual salary to be paid out of the Treasury of the United States, together with other compensation *out of the Treasury*. And it will be found upon examination of those acts that no limitation was placed by them on any compensation, but such as *was to be paid out of the Treasury*,

and no act of Congress, *then* or *now existing*, has ever limited land officers to $3,000 per year, "*from all sources.*"

Apparently, the attention of the Court was not called in that case to an act of Congress of February 2, 1859, (11 Stat., 378,) which purported to be, and was in fact, a legislative construction of the act of April 20, 1818, heretofore cited, and by necessary implication of this whole subject. It provides "that the act entitled 'An act for changing the compensation of receivers and registers of the land offices,' approved April 20, 1818, shall be so construed by the proper accounting officers of the Government as to restrict the aggregate amount allowed as compensation for the registers' and receivers' commissions on moneys received at any land office in any one calendar year to the sum of $2,500 each; and that the registers and receivers shall not receive for any one quarter or fractional quarter more than a *pro rata* allowance of said maximum of $2,500; the compensation both for *Salary* and *Commissions* to commence and be calculated from the time they enter on the discharge of their duties."

The "moneys received at any land office" referred to are the purchase moneys received from the sales of public lands, receipted for by the Receivers of Public Moneys, made accountable to the Treasury of the United States by the act of May 10th, 1800, (2 Stat., 73, sec. 6;) they were the only moneys which the defendant in error could receipt for and credit the United States with; farther, by the act of 1818, they were the moneys as expressed in the receipts filed by the Registers, and of which it was his duty to transmit an account to the Secretary of the Treasury.

When Congress, in 1859, directed the construction of the act of 1818 to be confined to the compensation of *Salary* and

Commissions received under its provisions, it consequently excluded the matter of the Bounty Land Warrants from consideration in determining the compensation of registers and receivers; and the fees for locating those warrants were left to stand separately as the exclusive compensation of the registers and receivers *for their services in locating such warrants.* And we are advised that this construing act was the result of some efforts on the part of certain officers of the Land Office, and of the Department of the Interior to place a different construction upon existing statutes. It would seem that this ought to be decisive of the subject.

In the opinion of the Court in the Babbitt case, it is said that "the act of 1856 provides a mode of compensating them (the registers and receivers) for additional clerical services and extraordinary expenses." The act referred to was an act of August 18, 1856, (11 Stat., 91,) a section of a general appropriation act, which provided "that in the settlement of the accounts of registers and receivers of the public land-offices the Secretary of the Interior be authorized to allow, subject to the approval of Congress, such reasonable compensation for additional clerical services, and extraordinary expenses incident to said offices as he shall think just and proper, and report to Congress all such cases of allowance at each succeeding session, with estimates of the sum or sums required to pay the same."

The Department of the Interior, we are informed, declined to give effect to this act; and by a clause in the deficiency act of February 19, 1861, (12 Stat., 131, 133,) *Congress repealed it;* and yet the Court was led into the error of supposing it to be yet *in force at the date of its decision.*

IV.

Our position, therefore, is simply this:

1st. That the defendant in error is entitled to compensation at the rate of one per cent. upon the *sales* of the *Indian trust lands* made by him, regardless of any limitation upon the ordinary compensation of the Receiver of Public moneys.

2d. That the defendant in error is entitled to all of the bounty-land warrant fees received by him from warrant holders during his term of office, in addition to the commissions on purchase moneys allowed him by the act of 1818 and its amendment of 1859.

3d. That the limitations upon the compensation of the Receivers were merely a limitation upon the amount to be received by them from the public moneys, *or out of the public Treasury.*

4th. That during the period of service of the defendant in error, there was no limitation by law upon the aggregate amount of Military Bounty Land Warrant Fees to be received and retained by him for his services in the matter of the location of bounty land warrants.

5th. That the defendant in error is, therefore, entitled to the amount of the judgment rendered in his favor by the District and Circuit Courts.

This case, of course, is unusual in its character, and not likely to be the subject of precedent. The law is now definitely fixed by statutes enacted subsequently to the time of the official service of the defendant in error, and the matter is no longer one of controvesry. The defendant in error is well

advanced in years; he is honorably noticed by the Historical Society at Topeka, Kansas, for his impartial and just treatment of the settlers in Kansas Territory, when it was a scene of disorder, strife, and bloodshed. At great risk to himself, and with the exercise of good judgment he secured over $340,000 of the Wea, &c., Indian trust moneys from attacks contemplated upon them, and took them hundreds of miles to their designated place of deposit. A portion of the Delaware Indian Trust Moneys, now due to the defendant in error, is for having deposited to their credit, before his accounts were made up, more money than he received for them. The United States never lost one cent of their money by him. All that he now seeks is to realize the compensation to which he deems himself to be justly and egally entitled for services faithfully and conscientiously rendered.

We earnestly, but most respectfully, request the Court to give his case the consideration to which we believe it to be entitled.

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Of Counsel for Defendant in Error.